

[Passed Both Houses]

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 39, ASSEMBLY, No. 2250 ACS,  
SENATE, Nos. 1815 and 1539

STATE OF NEW JERSEY

ADOPTED JUNE 5, 1997

Sponsored by Senator McNAMARA, Assemblyman BAGGER,  
Senators Singer, Ciesla, McGreevey, Assemblyman Garrett,  
Senators Baer, MacInnes, Bennett, Cafiero, Littell, Ewing,  
Kyrillos, Inverso, Assemblymen Bucco, DiGaetano, Doria,  
Zisa, LeFevre and Assemblywoman Heck

1 AN ACT concerning the remediation of contaminated sites, revising  
2 parts of the statutory law, and making appropriations.  
3  
4 BE IT ENACTED by the Senate and General Assembly of the State  
5 of New Jersey:  
6  
7 1. (New section) Sections 23 through 43 and section 45 of  
8 P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and  
9 supplemented, shall be known and may be cited as the "Brownfield and  
10 Contaminated Site Remediation Act."  
11  
12 2. (New section) The Legislature finds and declares that due to  
13 New Jersey's industrial history, large areas in the State's urban and  
14 suburban areas formerly used for commercial and industrial purposes  
15 are underused or abandoned; that many of these properties, often  
16 referred to as brownfields, are contaminated with hazardous  
17 substances and pose a health risk to the nearby residents and a threat  
18 to the environment; and that these sites can be a blight to the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.  
Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Senate SBA committee amendments adopted June 12, 1997.  
<sup>2</sup> Assembly AAP committee amendments adopted December 11, 1997.

1 neighborhood and a financial drain on a municipality because they have  
2 no productive use, and fail to generate property taxes and jobs. The  
3 Legislature further finds that often there are legal, financial, technical,  
4 and institutional impediments to the efficient and cost-effective  
5 cleanup of brownfield sites as well as all other contaminated sites  
6 wherever they may be. The Legislature finds and declares that the  
7 State needs to ensure that the public health and safety and the  
8 environment are protected from the risks posed by contaminated sites  
9 and that strict standards coupled with a risk based and flexible  
10 regulatory system will result in more cleanups and thus the elimination  
11 of the public's exposure to these hazardous substances and the  
12 environmental degradation that contamination causes.

13 The Legislature therefore declares that strict remediation standards  
14 are necessary to protect public health and safety and the environment;  
15 that these standards should be adopted based upon the risk posed by  
16 discharged hazardous substances; that <sup>2</sup>[permanent] unrestricted<sup>2</sup>  
17 remedies for contaminated sites are preferable and the State must  
18 adopt policies that encourage their use; that institutional and  
19 engineering controls should be allowed only when the public health  
20 risk and environmental protection standards are met; and that in order  
21 to encourage the cleanup of contaminated sites, there must be finality  
22 in the process, the provision of financial incentives, liability protection  
23 for innocent parties who clean up, cleanup procedures that are cost  
24 effective and regulatory action that is timely and efficient.

25  
26 3. (New section) a. The Department of Environmental Protection  
27 shall investigate and determine the extent of contamination of every  
28 aquifer in this State. The department shall prioritize its investigations  
29 of aquifers giving the highest priority to those aquifers underlying  
30 urban or industrial areas that are known or suspected of having large  
31 areas of contamination. This information shall be updated periodically  
32 as necessary. The information derived from the investigation shall be  
33 made available to the public by entering it into the Department of  
34 Environmental Protection's existing geographic information system,  
35 by making this information available on the system, and by making  
36 copies of any maps and data available to the public. The functions  
37 required pursuant to this section shall be considered a site remediation  
38 obligation of the State. The department may charge a reasonable fee  
39 for the reproduction of the maps and data which fee shall reflect the  
40 cost of their reproduction.

41 b. Upon completion of an investigation of an aquifer by the  
42 department and upon the department's determination of the extent of  
43 contamination of an aquifer, a person performing a remediation may  
44 rely upon that information for that person's submission of information  
45 to the department in the performance of a remediation.

46 c. The entire cost of the investigation required pursuant to this

1 section shall be borne by the department from appropriations made to  
2 it by the Legislature specifically for this purpose. The department may  
3 not fund any part of this investigation by the imposition of a fee or  
4 charge on any person performing a remediation or upon any person  
5 who is in need of a permit or approval from the department.

6 d. Nothing in this section shall be construed to require or obligate  
7 the department to reclassify the groundwater of any aquifer.  
8

9 4. (New section) a. The Department of Environmental Protection  
10 shall investigate and map those areas of the State at which large areas  
11 of historic fill exist. The department shall prioritize its investigations  
12 of historic fill areas giving highest priority to those areas of the State  
13 that are known or suspected to contain historic fill. This information  
14 shall be updated periodically as necessary. The information derived  
15 from the investigation shall be made available to the public by entering  
16 it into the Department of Environmental Protection's existing  
17 geographic information system, by making this information available  
18 on the system, and by making copies of any maps and data available to  
19 the public. The functions required pursuant to this section shall be  
20 considered a site remediation obligation of the State. The department  
21 may charge a reasonable fee for the reproduction of the maps and data  
22 which fee shall reflect the cost of their reproduction.

23 b. Upon completion of an investigation of an area of historic fill  
24 by the department and upon the department's determination of the  
25 location of historic fill in an area, a person performing a remediation  
26 may rely upon that information for that person's performance of a  
27 remediation and selection of a remedial action pursuant to subsection  
28 h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

29 c. The entire cost of investigation required pursuant to this section  
30 shall be borne by the department from appropriations made to it by the  
31 Legislature specifically for this purpose. The department may not fund  
32 any part of this investigation by the imposition of a fee or charge on  
33 any person performing a remediation or upon any person who is in  
34 need of a permit or approval from the department.  
35

36 5. (New section) a. There is created the "Brownfields  
37 Redevelopment Task Force." The Task Force shall consist of <sup>2</sup>[a]<sup>2</sup>  
38 five representatives from State agencies and six public members. The  
39 State agency representatives shall be from each of the following State  
40 agencies: the Office of State Planning in the Department of Treasury,  
41 the Office of Neighborhood Empowerment in the Department of  
42 Community Affairs, the New Jersey Redevelopment Authority in the  
43 Department of Commerce and Economic Development, the  
44 Department of Transportation, and the Site Remediation Program in  
45 the Department of Environmental Protection. The six public members  
46 shall be appointed by the Governor with the advice and consent of the

1 Senate. The public members shall include to the extent practicable: a  
2 representative of commercial or residential development interests, a  
3 representative of the financial community, a representative of a public  
4 interest environmental organization, a representative of a neighborhood  
5 or community redevelopment organization, a representative of a labor  
6 or trade organization, and a representative of a regional planning  
7 entity.

8 The Office of State Planning shall provide staff to implement the  
9 functions and duties of the Task Force. The public members of the  
10 Task Force shall serve without compensation but may be reimbursed  
11 for actual expenses in the performance of their duties. The Governor  
12 shall select the <sup>2</sup>[chairman] chairperson<sup>2</sup> of the Task Force.

13 b. The Task Force shall prepare and update an inventory of  
14 brownfield sites in the State. In preparing the inventory, priority shall  
15 be given to those areas of the State that receive assistance from the  
16 Urban Coordinating Council or from the Office of Neighborhood  
17 Empowerment. To the extent practicable, the inventory shall include  
18 an assessment of the contaminants known or suspected to have been  
19 discharged or that are currently stored on the site, the extent of any  
20 remediation performed on the site, the site's proximity to  
21 transportation networks, and the availability of infrastructure to  
22 support the redevelopment of the site. The information gathered for  
23 the inventory shall, to the extent practicable, be made available to the  
24 public by entering it into the Department of Environmental  
25 Protection's existing geographic information system, by making this  
26 information available on the system and by making copies of any maps  
27 and data available to the public. The department may charge a  
28 reasonable fee for the reproduction of maps and data which fee shall  
29 reflect the cost of their reproduction.

30 c. In addition to its functions pursuant to subsection b. of this  
31 section, the Task Force shall:

32 (1) coordinate State policy on brownfields redevelopment,  
33 including incentives, regulatory programs, provision of infrastructure,  
34 and redevelopment planning assistance to local governments;

35 (2) use the inventory to prioritize sites based on their immediate  
36 economic development potential;

37 (3) prepare a plan of action to return these sites to productive  
38 economic use on an expedited basis;

39 (4) actively market sites on the inventory to prospective  
40 developers;

41 (5) use the inventory to provide a targeted environmental  
42 assessment of the sites, or of areas containing several brownfield sites,  
43 by the Department of Environmental Protection;

44 (6) consult with the Pinelands Commission concerning the  
45 remediation and redevelopment of brownfield sites located in the  
46 pinelands area as designated pursuant to section 10 of P.L.1979, c.111

1 (C.13:18A-11);

2 (7) evaluate the performance of current public incentives in  
3 encouraging the remediation of and redevelopment of brownfields; and

4 (8) make recommendations to the Governor and the Legislature  
5 on means to better promote the redevelopment of brownfields,  
6 including the provision of necessary public infrastructure and methods  
7 to attract private investment in redevelopment.

8 d. As used in this section, "brownfield" means any former or  
9 current commercial or industrial site that is currently vacant or  
10 underutilized and on which there has been, or there is suspected to  
11 have been, a discharge of a contaminant.

12

13 6. (New section) a. Whenever after the effective date of P.L. ,

14 c. (now before the legislature as this bill) the Department of  
15 Environmental Protection issues a no further action letter pursuant to  
16 a remediation, it shall also issue to the person performing the  
17 remediation a covenant not to sue with respect to the real property  
18 upon which the remediation has been conducted. A covenant not to  
19 sue shall be executed by the person performing the remediation and by  
20 the department in order to become effective. The covenant not to sue  
21 shall be consistent with any conditions and limitations contained in the  
22 no further action letter. The covenant not to sue shall be for any area  
23 of concern remediated and may apply to the entire real property if the  
24 remediation included a preliminary assessment and, if necessary, a site  
25 investigation of the entire real property, and any other necessary  
26 remedial actions. The covenant remains effective only for as long as  
27 the real property for which the covenant was issued continues to meet  
28 the conditions of the no further action letter. Upon a finding by the  
29 department that real property or a portion thereof to which a covenant  
30 not to sue pertains, no longer meets with the conditions of the no  
31 further action letter, the department shall provide notice of that fact to  
32 the person responsible for maintaining compliance with the no further  
33 action letter. The department may allow the person a reasonable time  
34 to come into compliance with the terms of the original no further  
35 action letter. If the property does not meet the conditions of the no  
36 further action letter and if the department does not allow for a period  
37 of time to come into compliance or if the person fails to come into  
38 compliance within the time period, the department may invoke the  
39 provisions of the covenant not to sue permitting revocation of the  
40 covenant not to sue.

41 <sup>2</sup>[A] Except as provided in subsection e. of this section, a  
42 covenant not to sue shall contain the following, as applicable:

2

43 (1) a provision releasing the person who undertook the remediation  
44 from all civil liability to the State to perform any additional <sup>2</sup>[remedial  
45 activities and for any natural resource damages]remediation or for any  
46 cleanup and removal costs<sup>2</sup>;

1 (2) for a remediation that involves the use of engineering or  
2 institutional controls:

3 (a) a provision requiring the person, <sup>2</sup>or any subsequent owner,  
4 lessee, or operator<sup>2</sup> during the person's period of ownership<sup>2</sup>, tenancy,  
5 or operation<sup>2</sup>, to maintain those controls, conduct periodic monitoring  
6 for compliance, and submit to the department, on <sup>2</sup>[an bi-annual] a  
7 biennial<sup>2</sup> basis, a certification that the engineering and institutional  
8 controls are being properly maintained and continue to be protective  
9 of public health and safety and of the environment. The certification  
10 shall state the underlying facts and shall include the results of any  
11 tests or procedures performed that support the certification; and

12 (b) a provision revoking the covenant if the engineering or  
13 institutional controls are not being maintained or are no longer in  
14 place; and

15 (3) <sup>2</sup>for a remediation that involves the use of engineering controls  
16 but not for any remediation that involves the use of institutional  
17 controls only.<sup>2</sup> a provision barring the person or persons <sup>2</sup>[to]<sup>2</sup> whom  
18 the covenant not to sue benefits <sup>2</sup>,<sup>2</sup> from making a claim against the  
19 New Jersey Spill Compensation Fund and the Sanitary Landfill Facility  
20 Contingency Fund for any costs or damages relating to the real  
21 property and remediation covered by the covenant not to sue. <sup>2</sup> The  
22 covenant not to sue shall not bar a claim by any person against the  
23 New Jersey Spill Compensation Fund and the Sanitary Landfill  
24 Contingency Fund for any remediation that involves only the use of  
25 institutional controls if, after a valid no further action letter has been  
26 issued, the department orders additional remediation, except that the  
27 covenant shall bar such a claim if the department ordered additional  
28 remediation in order to remove the institutional control.<sup>2</sup>

29 b. Unless a covenant not to sue issued under this section is  
30 revoked by the department, the covenant shall remain effective. The  
31 covenant not to sue shall apply to all successors in ownership of the  
32 property and to all persons who lease the property or who engage in  
33 operations on the property.

34 c. If a covenant not to sue is revoked, liability for any additional  
35 remediation shall not be applied retroactively to any person for whom  
36 the covenant remained in effect during that person's ownership,  
37 tenancy, or operation of the property.

38 d. <sup>2</sup>[For any person liable for the discharge of a hazardous  
39 substance or who is in any way responsible for a hazardous substance  
40 pursuant to section 8 of P.L. 1976, c. 141 (C.58:10-23.11g), and who  
41 does not have a defense to liability pursuant to subsection d. of that  
42 section, a covenant not to sue shall not apply to liability for (1)  
43 contamination discovered subsequent to the issuance of the no further  
44 action letter but which contamination existed prior to the issuance of  
45 the no further action letter, (2) any change in a remediation standard,  
46 or (3) any contamination that has been remediated by the use of an

1 engineering control.

2 e. Notwithstanding the provisions of subsection a. of this section,  
3 a covenant not to sue shall only bar a claim for natural resource  
4 damages against a person who is entitled to a defense to liability  
5 pursuant to subsection d. of section 8 of P.L. 1976, c. 141 (C.58:10-  
6 23.11g).

7 f.]<sup>2</sup> A covenant not to sue and the protections it affords<sup>2</sup> shall not  
8 apply to any discharge that occurs subsequent to the issuance of the  
9 no further action letter which was the basis of the issuance of the  
10 covenant <sup>2</sup>, nor shall a covenant not to sue and the protections it  
11 affords relieve any person of the obligations to comply in the future  
12 with laws and regulations<sup>2</sup>.

13 <sup>2</sup>e. The covenant not to sue may be issued to any person who  
14 obtains a no further action letter as provided in subsection a. of this  
15 section. The covenant not to sue shall not provide relief from any  
16 liability, either under statutory or common law, to any person who is  
17 liable for cleanup and removal costs pursuant to subsection c. of  
18 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have  
19 a defense to liability pursuant to subsection d. of that section.<sup>2</sup>

20

21 7. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read  
22 as follows:

23 3. "Remedial action workplan" means a plan for the remedial  
24 action to be undertaken at an industrial establishment, or at any area  
25 to which a discharge originating at the industrial establishment is  
26 migrating or has migrated; a description of the remedial action to be  
27 used to remediate the industrial establishment; a time schedule and  
28 cost estimate of the implementation of the remedial action; and any  
29 other relevant information the department deems necessary;

30 "Closing operations" means:

31 (1) the cessation of operations resulting in at least a 90 percent  
32 reduction in the total value of the product output from the entire  
33 industrial establishment, as measured on a constant, annual  
34 date-specific basis, within any five year period, or, for industrial  
35 establishments for which the product output is undefined, a 90 percent  
36 reduction in the number of employees or a 90 percent reduction in the  
37 area of operations of an industrial establishment within any five year  
38 period; provided, however, the department may approve a waiver of  
39 the provisions of this paragraph for any owner or operator who, upon  
40 application and review, evidences a good faith effort to maintain and  
41 expand product output, the number of employees, or area of  
42 operations of the affected industrial establishment;

43 (2) any temporary cessation of operations of an industrial  
44 establishment for a period of not less than two years;

45 (3) any judicial proceeding or final agency action through which  
46 an industrial establishment becomes nonoperational for health or safety

1 reasons;

2 (4) the initiation of bankruptcy proceedings pursuant to Chapter  
3 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing  
4 of a plan of reorganization that provides for a liquidation pursuant to  
5 Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;

6 (5) any change in operations of an industrial establishment that  
7 changes the industrial establishment's Standard Industrial Classification  
8 number to one that is not subject to this act; or

9 (6) the termination of a lease unless there is no disruption in  
10 operations of the industrial establishment, or the assignment of a lease;

11 "Transferring ownership or operations" means:

12 (1) any transaction or proceeding through which an industrial  
13 establishment undergoes a change in ownership;

14 (2) the sale or transfer of more than 50% of the assets of an  
15 industrial establishment within any five year period, as measured on a  
16 constant, annual date-specific basis;

17 (3) the execution of a lease for a period of 99 years or longer for  
18 an industrial establishment; or

19 (4) the dissolution of an entity that is an owner or operator or an  
20 indirect owner of an industrial establishment, except for any  
21 dissolution of an indirect owner of an industrial establishment whose  
22 assets would have been unavailable for the remediation of the  
23 industrial establishment if the dissolution had not occurred;

24 "Change in ownership" means:

25 (1) the sale or transfer of the business of an industrial  
26 establishment or any of its real property;

27 (2) the sale or transfer of stock in a corporation resulting in a  
28 merger or consolidation involving the direct owner or operator or  
29 indirect owner of the industrial establishment;

30 (3) the sale or transfer of stock in a corporation, or the transfer of  
31 a partnership interest, resulting in a change in the person holding the  
32 controlling interest in the direct owner or operator or indirect owner  
33 of an industrial establishment;

34 (4) the sale or transfer of title to an industrial establishment or the  
35 real property of an industrial establishment by exercising an option to  
36 purchase; or

37 (5) the sale or transfer of a partnership interest in a partnership  
38 that owns or operates an industrial establishment, that would reduce,  
39 by 10% or more, the assets available for remediation of the industrial  
40 establishment;

41 "Change in ownership" shall not include:

42 (1) a corporate reorganization not substantially affecting the  
43 ownership of the industrial establishment;

44 (2) a transaction or series of transactions involving the transfer of  
45 stock, assets or both, among corporations under common ownership,  
46 if the transaction or transactions will not result in the diminution of the

1 net worth of the corporation that directly owns or operates the  
2 industrial establishment by more than 10%, or if an equal or greater  
3 amount in assets is available for the remediation of the industrial  
4 establishment before and after the transaction or transactions;

5 (3) a transaction or series of transactions involving the transfer of  
6 stock, assets or both, resulting in the merger or de facto merger or  
7 consolidation of the indirect owner with another entity, or in a change  
8 in the person holding the controlling interest of the indirect owner of  
9 an industrial establishment, when the indirect owner's assets would  
10 have been unavailable for cleanup if the transaction or transactions had  
11 not occurred;

12 (4) a transfer where the transferor is the sibling, spouse, child,  
13 parent, grandparent, child of a sibling, or sibling of a parent of the  
14 transferee;

15 (5) a transfer to confirm or correct any deficiencies in the  
16 recorded title of an industrial establishment;

17 (6) a transfer to release a contingent or reversionary interest  
18 except for any transfer of a lessor's reversionary interest in leased real  
19 property;

20 (7) a transfer of an industrial establishment by devise or intestate  
21 succession;

22 (8) the granting or termination of an easement or a license to any  
23 portion of an industrial establishment;

24 (9) the sale or transfer of real property pursuant to a  
25 condemnation proceeding initiated pursuant to the "Eminent Domain  
26 Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

27 (10) execution, delivery and filing or recording of any mortgage,  
28 security interest, collateral assignment or other lien on real or personal  
29 property; or

30 (11) any transfer of personal property pursuant to a valid security  
31 agreement, collateral assignment or other lien, including, but not  
32 limited to, seizure or replevin of such personal property which transfer  
33 is for the purpose of implementing the secured party's rights in the  
34 personal property which is the collateral.

35 "Department" means the Department of Environmental Protection  
36 [and Energy];

37 "Hazardous substances" means those elements and compounds,  
38 including petroleum products, which are defined as such by the  
39 department, after public hearing, and which shall be consistent to the  
40 maximum extent possible with, and which shall include, the list of  
41 hazardous substances adopted by the Environmental Protection  
42 Agency pursuant to Section 311 of the "Federal Water Pollution  
43 Control Act Amendments of 1972" (33 U.S.C. §1321) and the list of  
44 toxic pollutants designated by Congress or the Environmental  
45 Protection Agency pursuant to Section 307 of that act (33 U.S.C.  
46 §1317); except that sewage and sewage sludge shall not be considered

1 as hazardous substances for the purposes of this act;

2 "Hazardous waste" shall have the same meaning as provided in  
3 section 1 of P.L.1976, c.99 (C.13:1E-38);

4 "Industrial establishment" means any place of business engaged in  
5 operations which involve the generation, manufacture, refining,  
6 transportation, treatment, storage, handling, or disposal of hazardous  
7 substances or hazardous wastes on-site, above or below ground,  
8 having a Standard Industrial Classification number within 22-39  
9 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard  
10 Industrial Classifications Manual prepared by the Office of  
11 Management and Budget in the Executive Office of the President of  
12 the United States. Those facilities or parts of facilities subject to  
13 operational closure and post-closure maintenance requirements  
14 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
15 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
16 Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste  
17 Disposal Act" (42 U.S.C. §6901 et seq.), or any establishment engaged  
18 in the production or distribution of agricultural commodities, shall not  
19 be considered industrial establishments for the purposes of this act.  
20 The department may, pursuant to the "Administrative Procedure Act,"  
21 P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or  
22 classes of operations within those sub-groups within the Standard  
23 Industrial Classification major group numbers listed in this subsection  
24 upon a finding that the operation of the industrial establishment does  
25 not pose a risk to public health and safety;

26 "Negative declaration" means a written declaration, submitted by  
27 the owner or operator of an industrial establishment or other person  
28 assuming responsibility for the remediation under paragraph (3) of  
29 subsection b. of section 4 of P.L.1983, c.330 to the department,  
30 certifying that there has been no discharge of hazardous substances or  
31 hazardous wastes on the site, or that any such discharge on the site or  
32 discharge that has migrated or is migrating from the site has been  
33 remediated in accordance with procedures approved by the department  
34 and in accordance with any applicable remediation regulations;

35 "Discharge" means an intentional or unintentional action or  
36 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
37 emitting, emptying, or dumping of a hazardous substance or hazardous  
38 waste into the waters or onto the lands of the State;

39 "No further action letter" means a written determination by the  
40 department that, based upon an evaluation of the historical use of the  
41 industrial establishment and the property, or of an area of concern or  
42 areas of concern, as applicable, and any other investigation or action  
43 the department deems necessary, there are no discharged hazardous  
44 substances or hazardous wastes present at the site of the industrial  
45 establishment, at the area of concern or areas of concern, or at any  
46 other site to which discharged hazardous substances or hazardous

1 wastes originating at the industrial establishment have migrated, and  
2 that any discharged hazardous substances or hazardous wastes present  
3 at the industrial establishment or that have migrated from the site have  
4 been remediated in accordance with applicable remediation  
5 regulations;

6 "Indirect owner" means any person who holds a controlling interest  
7 in a direct owner or operator, holds a controlling interest in another  
8 indirect owner, or holds an interest in a partnership which is an  
9 indirect owner or a direct owner or operator, of an industrial  
10 establishment;

11 "Direct owner or operator" means any person that directly owns or  
12 operates an industrial establishment. A holder of a mortgage or other  
13 security interest in the industrial establishment shall not be deemed to  
14 be a direct owner or operator of the industrial establishment unless or  
15 until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4  
16 et al.) or obtains title to the industrial establishment by deed of  
17 foreclosure, by other deed, or by court order or other process;

18 "Area of concern" means any location where hazardous substances  
19 or hazardous wastes are or were known or suspected to have been  
20 discharged, generated, manufactured, refined, transported, stored,  
21 handled, treated, or disposed, or where hazardous substances or  
22 hazardous wastes have or may have migrated;

23 "Remediation standards" means the combination of numeric <sup>2</sup>[and  
24 narrative]<sup>2</sup> standards that establish a level or concentration <sup>2</sup> and  
25 narrative standards,<sup>2</sup> to which hazardous substances or hazardous  
26 wastes must be [investigated or remediated as established] treated,  
27 removed, or otherwise cleaned for soil, groundwater, or surface water,  
28 as provided by the department pursuant to section 35 of P.L.1993,  
29 c.139 (C.58:10B-12) in order to meet the health risk or environmental  
30 standards;

31 "Owner" means any person who owns the real property of an  
32 industrial establishment or who owns the industrial establishment. A  
33 holder of a mortgage or other security interest in the industrial  
34 establishment shall not be deemed to be an owner of the industrial  
35 establishment unless or until it loses its exemption under P.L.1993,  
36 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial  
37 establishment by deed of foreclosure, by other deed, or by court order  
38 or other process;

39 "Operator" means any person, including users, tenants, or  
40 occupants, having and exercising direct actual control of the  
41 operations of an industrial establishment. A holder of a mortgage or  
42 other security interest in the industrial establishment shall not be  
43 deemed to be an operator of the industrial establishment unless or until  
44 it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.)  
45 or obtains title to the industrial establishment by deed of foreclosure,  
46 by other deed, or by court order or other process;

1 "Preliminary assessment" means the first phase in the process of  
2 identifying areas of concern and determining whether hazardous  
3 substances or hazardous wastes are or were present at an industrial  
4 establishment or have migrated or are migrating from the industrial  
5 establishment, and shall include the initial search for and evaluation of,  
6 existing site specific operational and environmental information, both  
7 current and historic, to determine if further investigation concerning  
8 the documented, alleged, suspected or latent discharge of any  
9 hazardous substance or hazardous waste is required. The evaluation  
10 of historic information shall be conducted from 1932 to the present,  
11 except that the department may require the search for and evaluation  
12 of additional information relating to ownership and use of the site  
13 prior to 1932 if such information is available through diligent inquiry  
14 of public records;

15 "Remediation" or "remediate" means all necessary actions to  
16 investigate and clean up or respond to any known, suspected, or  
17 threatened discharge of hazardous substances or hazardous wastes,  
18 including, as necessary, the preliminary assessment, site investigation,  
19 remedial investigation, and remedial action;

20 "Remedial action" means those actions taken at an industrial  
21 establishment or offsite of an industrial establishment if hazardous  
22 substances or hazardous wastes have migrated or are migrating  
23 therefrom, as may be required by the department to protect public  
24 health, safety, and the environment. These actions may include the  
25 removal, treatment, containment, transportation, securing, or other  
26 engineering measures, whether <sup>2</sup>[of a permanent nature] to an  
27 unrestricted use<sup>2</sup> or otherwise, designed to ensure that any discharged  
28 hazardous substances or hazardous wastes at the site or that have  
29 migrated or are migrating from the site, are remediated in compliance  
30 with the applicable [remediation] health risk or environmental  
31 standards;

32 "Remedial investigation" means a process to determine the nature  
33 and extent of a discharge of hazardous substances or hazardous wastes  
34 at an industrial establishment or a discharge of hazardous substances  
35 or hazardous wastes that have migrated or are migrating from the site  
36 and the problems presented by a discharge, and may include data  
37 collection, site characterization, sampling, monitoring, and the  
38 gathering of any other sufficient and relevant information necessary to  
39 determine the necessity for remedial action and to support the  
40 evaluation of remedial actions if necessary;

41 "Site investigation" means the collection and evaluation of data  
42 adequate to determine whether or not discharged hazardous  
43 substances or hazardous wastes exist at the industrial establishment or  
44 have migrated or are migrating from the site at levels in excess of the  
45 applicable remediation standards. A site investigation shall be  
46 developed based upon the information collected pursuant to the

1 preliminary assessment.  
2 (cf: P.L.1993, c.139, s.3)

3

4 8. Section 4 of P.L.1983, c.330 (C.13:1K-9) is amended to read  
5 as follows:

6 4. a. The owner or operator of an industrial establishment  
7 planning to close operations or transfer ownership or operations shall  
8 notify the department in writing, no more than five days subsequent to  
9 closing operations or of its public release of its decision to close  
10 operations, whichever occurs first, or within five days after the  
11 execution of an agreement to transfer ownership or operations, as  
12 applicable. The notice to the department shall: identify the subject  
13 industrial establishment; describe the transaction requiring compliance  
14 with P.L.1983, c.330 (C.13:1K-6 et al.); state the date of the closing  
15 of operations or the date of the public release of the decision to close  
16 operations as evidenced by a copy of the appropriate public  
17 announcement, if applicable; state the date of execution of the  
18 agreement to transfer ownership or operations and the names,  
19 addresses and telephone numbers of the parties to the transfer, if  
20 applicable; state the proposed date for closing operations or  
21 transferring ownership or operations; list the name, address, and  
22 telephone number of an authorized agent for the owner or operator;  
23 and certify that the information submitted is accurate. The notice shall  
24 be transmitted to the department in the manner and form required by  
25 the department. The department may, by regulation, require the  
26 submission of any additional information in order to improve the  
27 efficient implementation of P.L.1983, c.330.

28 b. (1) Subsequent to the submittal of the notice required pursuant  
29 to subsection a. of this section, the owner or operator of an industrial  
30 establishment shall, except as otherwise provided by P.L.1983, c.330  
31 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate the industrial  
32 establishment. The remediation shall be conducted in accordance with  
33 criteria, procedures, and time schedules established by the department.

34 (2) The owner or operator shall attach a copy of any approved  
35 negative declaration, approved remedial action workplan, no further  
36 action letter, or remediation agreement approval to the contract or  
37 agreement of sale or agreement to transfer or any option to purchase  
38 which may be entered into with respect to the transfer of ownership or  
39 operations. In the event that any sale or transfer agreements or  
40 options have been executed prior to the approval of a negative  
41 declaration, remedial action workplan, no further action letter, or  
42 remediation agreement, these documents, as relevant, shall be  
43 transmitted by the owner or operator, by certified mail, overnight  
44 delivery, or personal service, prior to the transfer of ownership or  
45 operations, to all parties to any transaction concerning the transfer of  
46 ownership or operations, including purchasers, bankruptcy trustees,

1 mortgagees, sureties, and financiers.

2 (3) The preliminary assessment, site investigation, remedial  
3 investigation, and remedial action for the industrial establishment shall  
4 be performed and implemented by the owner or operator of the  
5 industrial establishment, except that any other party may assume that  
6 responsibility pursuant to the provisions of P.L.1983, c.330.

7 c. The owner or operator of an industrial establishment shall,  
8 subsequent to closing operations, or of its public release of its decision  
9 to close operations, or prior to transferring ownership or operations  
10 except as otherwise provided in subsection e. of this section, as  
11 applicable, submit to the department for approval a proposed negative  
12 declaration or proposed remedial action workplan. Except as  
13 otherwise provided in section 6 of P.L.1983, c.330 (C.13:1K-11), and  
14 sections 13, 16, 17 and 18 of P.L.1993, c.139 (C.13:1K-11.2,  
15 C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the owner or  
16 operator of an industrial establishment shall not transfer ownership or  
17 operations until a negative declaration or a remedial action workplan  
18 has been approved by the department or the conditions of subsection  
19 e. of this section for remediation agreements have been met and until,  
20 in cases where a remedial action workplan is required to be approved  
21 or a remediation agreement has been approved, a remediation funding  
22 source, as required pursuant to section 25 of P.L.1993, c.139  
23 (C.58:10B-3), has been established.

24 d. (1) Upon the submission of the results of either the preliminary  
25 assessment, site investigation, remedial investigation, or remedial  
26 action, where applicable, which demonstrate that there are no  
27 discharged hazardous substances or hazardous wastes at the industrial  
28 establishment, or that have migrated from or are migrating from the  
29 industrial establishment, in violation of the applicable remediation  
30 [standards] regulations, the owner or operator may submit to the  
31 department for approval a proposed negative declaration as provided  
32 in subsection c. of this section.

33 (2) After the submission and review of the information submitted  
34 pursuant to a preliminary assessment, site investigation, remedial  
35 investigation, or remedial action, as necessary, the department shall,  
36 within 45 days of submission of a complete and accurate negative  
37 declaration, approve the negative declaration, or inform the owner or  
38 operator of the industrial establishment that a remedial action  
39 workplan or additional remediation shall be required. The department  
40 shall approve a negative declaration by the issuance of a no further  
41 action letter.

42 e. The owner or operator of an industrial establishment, who has  
43 submitted a notice to the department pursuant to subsection a. of this  
44 section, may transfer ownership or operations of the industrial  
45 establishment prior to the approval of a negative declaration or  
46 remedial action workplan upon application to and approval by the

1 department of a remediation agreement. The owner or operator  
2 requesting a remediation agreement shall submit the following  
3 documents: (1) an estimate of the cost of the remediation that is  
4 approved by the department; (2) a certification of the statutory liability  
5 of the owner or operator pursuant to P.L.1983, c.330 to perform and  
6 to complete a remediation of the industrial establishment in the manner  
7 and time limits provided by the department in regulation and consistent  
8 with all applicable laws and regulations; however, nothing in this  
9 paragraph shall be construed to be an admission of liability, or to  
10 impose liability on the owner or operator, pursuant to P.L.1976, c.141  
11 (C.58:10-23.11 et seq.) or pursuant to any other statute or common  
12 law; (3) evidence of the establishment of a remediation funding source  
13 in an amount of the estimated cost of the remediation and in  
14 accordance with the provisions of section 25 of P.L.1993, c.139  
15 (C.58:10B-3); (4) a certification that the owner or operator is subject  
16 to the provisions of P.L.1983, c.330, including the liability for  
17 penalties for violating the act, defenses to liability and limitations  
18 thereon, the requirement to perform a remediation as required by the  
19 department, allowing the department access to the industrial  
20 establishment as provided in section 5 of P.L.1983, c.330  
21 (C.13:1K-10), and the requirement to prepare and submit any  
22 document required by the department relevant to the remediation of  
23 the industrial establishment; and (5) evidence of the payment of all  
24 applicable fees required by the department.

25 The department may require in the remediation agreement that all  
26 plans for and results of the preliminary assessment, site investigation,  
27 remedial investigation, and the implementation of the remedial action  
28 workplan, prepared or initiated subsequent to the transfer of  
29 ownership or operations, be submitted to the department, for review  
30 purposes only, at the completion of each phase of the remediation.

31 The department shall adopt regulations establishing the manner in  
32 which the documents required pursuant to paragraphs (1) through (5),  
33 inclusive, of this subsection shall be submitted. The department shall  
34 approve the application for the remediation agreement upon the  
35 complete and accurate submission of the documents required to be  
36 submitted pursuant to this subsection. The regulations shall include a  
37 sample form of the certifications. Approval of a remediation agreement  
38 shall not affect an owner's or operator's right to avail itself of the  
39 provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of section  
40 13, 14, 15, 16, 17, or 18 of P.L.1993, c.139 (C.13:1K-11.2,  
41 C.13:1K-11.3, C.13:1K-11.4, C.13:1K-11.5, C.13:1K-11.6 or  
42 C.13:1K-11.7), or of the other provisions of this section.

43 f. An owner or operator of an industrial establishment may  
44 perform a preliminary assessment, site investigation, or remedial  
45 investigation for a soil, surface water, or groundwater remediation  
46 without the prior submission to or approval of the department, except

1 as otherwise provided in a remediation agreement required pursuant  
2 to subsection e. of this section. However, the plans for and results of  
3 the preliminary assessment, site investigation, and remedial  
4 investigation may, at the discretion of the owner or operator, be  
5 submitted to the department for its review and approval at the  
6 completion of each phase of the remediation.

7 g. [(1)] The soil, groundwater, and surface water remediation  
8 standard and the remedial action to be implemented on an industrial  
9 establishment shall be selected [in conformance with] by the owner or  
10 operator, and reviewed and approved by the department, based upon  
11 the policies and criteria enumerated in section 35 of P.L.1993, c.139  
12 (C.58:10B-12).

13 [(2) The department may not disapprove the use of the minimum  
14 nonresidential soil remediation standards adopted by the department  
15 except upon a finding that the use of the nonresidential soil  
16 remediation standards at that site would not be protective of public  
17 health, safety, or the environment or except as provided in subsection  
18 i. of this section. ]

19 h. An owner or operator of an industrial establishment may  
20 implement a soil remedial action at an industrial establishment without  
21 prior department approval of the remedial action workplan for the  
22 remediation of soil when the remedial action can reasonably be  
23 expected to be completed pursuant to standards, criteria, and time  
24 schedules established by the department, which schedules shall not  
25 exceed five years from the commencement of the implementation of  
26 the remedial action and if the owner or operator is implementing a soil  
27 remediation which meets the established minimum residential or  
28 nonresidential use soil remediation standards adopted by the  
29 department.

30 Nothing in this subsection shall be construed to authorize the  
31 closing of operations or the transfer of ownership or operations of an  
32 industrial establishment without the department's approval of a  
33 negative declaration, a remedial action workplan or a remediation  
34 agreement.

35 i. An owner or operator of an industrial establishment shall base  
36 [his] the decision to [use the nonresidential use soil remediation  
37 standards for the industrial establishment upon the criteria listed  
38 below, as applicable:

39 (1) The soil remediation standards proposed for the industrial  
40 establishment are protective of public health, safety and the  
41 environment;

42 (2) The accessibility of the industrial establishment to persons not  
43 authorized to enter the site;

44 (3) The transferee of the industrial establishment has agreed to the  
45 implementation of the nonresidential use soil remediation standards;

46 (4) The potential for hazardous substances or hazardous wastes

1 to affect any other property;

2 (5) The difference in cost between the use of the residential use  
3 soil remediation standards and the nonresidential use soil remediation  
4 standards; and

5 (6) Consistency with regulations established by the Pinelands  
6 Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.).

7 The department shall, within 18 months of the effective date of  
8 P.L.1993, c.139 (C.13:1K-9.6 et al.), promulgate regulations to clearly  
9 define how the department will evaluate the application of the criteria  
10 enumerated in paragraphs (1) through (6) of this subsection; provided,  
11 however, that notwithstanding the preceding requirement, the criteria  
12 enumerated in paragraphs (1) through (4) and in paragraph (6) shall  
13 become immediately operative. Until the department promulgates  
14 those regulations, it shall impose reasonable standards and  
15 requirements upon any owner or operator deciding to use  
16 nonresidential use soil remediation standards pursuant to this  
17 subsection. Furthermore, the department shall not impose any  
18 requirement or standard with regard to the criterion enumerated in  
19 paragraph (5) that would require an owner or operator to implement  
20 residential use soil remediation standards unless the cost difference  
21 between implementing the residential standards and the nonresidential  
22 standards is a de minimis amount. For the purposes of the preceding,  
23 de minimis shall mean a cost difference not exceeding 10 percent of  
24 the cost of implementing the nonresidential standards.] select a  
25 remedial action based upon the standards and criteria set forth in  
26 section 35 of P.L.1993, c.139 (C.58:10B-12). When a remedial action  
27 selected by an owner or operator includes the use of an engineering or  
28 institutional controls that necessitates the recording of a notice  
29 pursuant to section 36 of P.L. 1993, c.139 (C.58:10B-13), the owner  
30 or operator shall obtain the approval of the transferee of the industrial  
31 establishment.

32 At any time after the effective date of P.L.1993, c.139, an owner  
33 or operator may request the department to provide a determination as  
34 to whether a proposed remedial action is consistent with the standards  
35 and criteria set forth [above in paragraphs (1) through (6)] in section  
36 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that  
37 determination based upon the standards and criteria set forth in that  
38 section. The department shall provide any such determination within  
39 30 calendar days of the department's receipt of the request.

40 j. An owner or operator proposing to implement a soil remedial  
41 action other than one which is set forth in subsection h. of this section  
42 must receive department approval prior to implementation of the  
43 remedial action.

44 k. An owner or operator of an industrial establishment shall not  
45 implement a remedial action involving the remediation of groundwater  
46 or surface water without the prior review and approval by the

1 department of a remedial action workplan.

2 1. Submissions of a preliminary assessment, site investigation,  
3 remedial investigation, remedial action workplan, and the results of a  
4 remedial action shall be in a manner and form, and shall contain any  
5 relevant information relating to the remediation, as may be required by  
6 the department.

7 Upon receipt of a complete and accurate submission, the  
8 department shall review and approve or disapprove the submission in  
9 accordance with the review schedules established pursuant to section  
10 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not  
11 be required to wait for a response by the department before continuing  
12 remediation activities, except as otherwise provided in this section.  
13 Upon completion of the remediation, the plans for and results of the  
14 preliminary assessment, site investigation, remedial investigation,  
15 remedial action workplan, and remedial action and any other  
16 information required to be submitted as provided in section 35 of  
17 P.L.1993, c.139 (C.58:10B-12), that has not previously been  
18 submitted to the department, shall be submitted to the department for  
19 its review and approval.

20 The department shall review all information submitted to it by the  
21 owner or operator at the completion of the remediation to determine  
22 whether the actions taken were in compliance with rules and  
23 regulations of the department regarding remediation.

24 The department may review and approve or disapprove every  
25 remedial action workplan, no matter when submitted, to determine, in  
26 accordance with the criteria listed in subsection g. of section 35 of  
27 P.L.1993, c.139 (C.58:10B-12) if the remedial action that has  
28 occurred or that will occur is appropriate to meet the applicable  
29 [remediation] health risk or environmental standards.

30 The department may order additional remediation activities at the  
31 industrial establishment, or offsite where necessary, or may require the  
32 submission of additional information, where (a) the department  
33 determines that the remediation activities undertaken were not in  
34 compliance with the applicable rules or regulations of the department;  
35 (b) all documents required to be submitted to the department were not  
36 submitted or, if submitted, were inaccurate, or deficient; or (c)  
37 discharged hazardous substances or hazardous wastes remain at the  
38 industrial establishment, or have migrated or are migrating offsite, at  
39 levels or concentrations or in a manner that is in violation of the  
40 applicable [remediation] health risk or environmental standards. Upon  
41 a finding by the department that the remediation conducted at the  
42 industrial establishment was in compliance with all applicable  
43 regulations, that no hazardous substances or hazardous wastes remain  
44 at the industrial establishment in a manner that is in violation of the  
45 applicable [remediation] health risk or environmental standards, and  
46 that all hazardous substances or hazardous wastes that migrated from

1 the industrial establishment have been remediated in conformance with  
2 the applicable [remediation] health risk or environmental standards,  
3 the department shall approve the remediation for that industrial  
4 establishment by the issuance of a no further action letter.

5 (cf: P.L.1993, c.139, s.4)

6  
7 9. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to read  
8 as follows:

9 23. As used in sections 23 through 43 and section 45 of P.L.1993,  
10 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

11 "Area of concern" means any location where contaminants are or  
12 were known or suspected to have been discharged, generated,  
13 manufactured, refined, transported, stored, handled, treated, or  
14 disposed, or where contaminants have or may have migrated;

15 "Authority" means the New Jersey Economic Development  
16 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

17 "Contamination" or "contaminant" means any discharged  
18 hazardous substance as defined pursuant to section 3 of P.L.1976,  
19 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to  
20 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
21 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

22 "Department" means the Department of Environmental Protection  
23 [and Energy];

24 "Discharge" means an intentional or unintentional action or  
25 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
26 emitting, emptying, or dumping of a contaminant onto the land or into  
27 the waters of the State;

28 "Engineering controls" means any mechanism to contain or  
29 stabilize contamination or ensure the effectiveness of a remedial  
30 action. Engineering controls may include, without limitation, caps,  
31 covers, dikes, trenches, leachate collection systems, signs, fences and  
32 physical access controls;

33 "Environmental opportunity zone" has the meaning given that term  
34 pursuant to section 3 of P.L. 1995, c.413 (C.54:4-3.152):

35 "Financial assistance" means loans or loan guarantees;

36 "Institutional controls" means a mechanism used to limit human  
37 activities at or near a contaminated site, or to ensure the effectiveness  
38 of the remedial action over time, when contaminants remain at a  
39 contaminated site in levels or concentrations above the applicable  
40 remediation standard that would allow unrestricted use of that  
41 property. Institutional controls may include, without limitation,  
42 structure, land, and natural resource use restrictions, well restriction  
43 areas, and deed notices;

44 <sup>2</sup>"Limited restricted use remedial action" means any remedial action  
45 that requires the continued use of institutional controls but does not  
46 require the use of an engineering control;<sup>2</sup>

1 "No further action letter" means a written determination by the  
2 department that based upon an evaluation of the historical use of a  
3 particular site, or of an area of concern or areas of concern at that site,  
4 as applicable, and any other investigation or action the department  
5 deems necessary, there are no discharged contaminants present at the  
6 site, at the area of concern or areas of concern, at any other site to  
7 which a discharge originating at the site has migrated, or that any  
8 discharged contaminants present at the site or that have migrated from  
9 the site have been remediated in accordance with applicable  
10 remediation regulations;

11 <sup>2</sup>"Nonpermanent remedial action" means any remedial action that  
12 requires the continued use of engineering controls in order to meet the  
13 established health risk or environmental standards;

14 "Permanent remedial action" means any remedial action that does  
15 not require the continued use of engineering controls in order to meet  
16 the established health risk or environmental standards. A remedial  
17 action may be considered permanent even if institutional controls are  
18 employed at the site;]<sup>2</sup>

19 "Preliminary assessment" means the first phase in the process of  
20 identifying areas of concern and determining whether contaminants are  
21 or were present at a site or have migrated or are migrating from a site,  
22 and shall include the initial search for and evaluation of, existing site  
23 specific operational and environmental information, both current and  
24 historic, to determine if further investigation concerning the  
25 documented, alleged, suspected or latent discharge of any contaminant  
26 is required. The evaluation of historic information shall be conducted  
27 from 1932 to the present, except that the department may require the  
28 search for and evaluation of additional information relating to  
29 ownership and use of the site prior to 1932 if such information is  
30 available through diligent inquiry of the public records;

31 "Remedial action" means those actions taken at a site or offsite if  
32 a contaminant has migrated or is migrating therefrom, as may be  
33 required by the department, including the removal, treatment,  
34 containment, transportation, securing, or other engineering or  
35 treatment measures, whether <sup>2</sup>[of a permanent nature] to an  
36 unrestricted use<sup>2</sup> or otherwise, designed to ensure that any discharged  
37 contaminant at the site or that has migrated or is migrating from the  
38 site, is remediated in compliance with the applicable [remediation  
39 standards] health risk or environmental standards;

40 "Remedial action workplan" means a plan for the remedial action  
41 to be undertaken at a site, or at any area to which a discharge  
42 originating at a site is migrating or has migrated; a description of the  
43 remedial action to be used to remediate a site; a time schedule and cost  
44 estimate of the implementation of the remedial action; and any other  
45 information the department deems necessary;

46 "Remedial investigation" means a process to determine the nature

1 and extent of a discharge of a contaminant at a site or a discharge of  
2 a contaminant that has migrated or is migrating from the site and the  
3 problems presented by a discharge, and may include data collected,  
4 site characterization, sampling, monitoring, and the gathering of any  
5 other sufficient and relevant information necessary to determine the  
6 necessity for remedial action and to support the evaluation of remedial  
7 actions if necessary;

8 "Remediation" or "remediate" means all necessary actions to  
9 investigate and clean up or respond to any known, suspected, or  
10 threatened discharge of contaminants, including, as necessary, the  
11 preliminary assessment, site investigation, remedial investigation, and  
12 remedial action;

13 "Remediation fund" means the Hazardous Discharge Site  
14 Remediation Fund established pursuant to section 26 of P.L.1993,  
15 c.139 (C.58:10B-4);

16 "Remediation funding source" means the methods of financing the  
17 remediation of a discharge required to be established by a person  
18 performing the remediation pursuant to section 25 of P.L.1993, c.139  
19 (C.58:10B-3);

20 "Remediation standards" means the combination of numeric <sup>2</sup>[and  
21 narrative]<sup>2</sup> standards that establish a level or concentration <sup>2</sup>, and  
22 narrative standards<sup>2</sup> to which contaminants must be treated, removed,  
23 or otherwise cleaned for soil, groundwater, or surface water, as  
24 provided by the department pursuant to section 35 of P.L.1993, c.139  
25 (C.58:10B-12) in order to meet the health risk or environmental  
26 standards;

27 <sup>2</sup>"Restricted use remedial action" means any remedial action that  
28 requires the continued use of engineering and institutional controls in  
29 order to meet the established health risk or environmental standards;<sup>2</sup>

30 "Site investigation" means the collection and evaluation of data  
31 adequate to determine whether or not discharged contaminants exist  
32 at a site or have migrated or are migrating from the site at levels in  
33 excess of the applicable remediation standards. A site investigation  
34 shall be developed based upon the information collected pursuant to  
35 the preliminary assessment ;

36 ["Remedial action workplan" means a plan for the remedial action  
37 to be undertaken at a site, or at any area to which a discharge  
38 originating at a site is migrating or has migrated; a description of the  
39 remedial action to be used to remediate a site; a time schedule and cost  
40 estimate of the implementation of the remedial action; and any other  
41 information the department deems necessary;

42 "Remediation fund" means the Hazardous Discharge Site  
43 Remediation Fund established pursuant to section 26 of P.L.1993,  
44 c.139 (C.58:10B-4);

45 "Remediation standards" means the combination of numeric and  
46 narrative standards to which contaminants must be remediated for soil,

1 groundwater, or surface water as provided by the department pursuant  
2 to section 35 of P.L.1993, c.139 (C.58:10B-12).]

3 <sup>2</sup>"Unrestricted use remedial action" means any remedial action that  
4 does not require the continued use of engineering or institutional  
5 controls in order to meet the established health risk or environmental  
6 standards.<sup>2</sup>

7 "Voluntarily perform a remediation" means performing a  
8 remediation without having been ordered or directed to do so by the  
9 department or by a court and without being compelled to perform a  
10 remediation pursuant to the provisions of P.L. 1983, c.330 (C.13:1K-6  
11 et al.).

12 (cf: P.L.1993, c.139, s.23)

13  
14 10. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to  
15 read as follows:

16 24. a. The department shall, pursuant to the "Administrative  
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
18 regulations establishing criteria and minimum standards necessary for  
19 the submission, evaluation and approval of plans or results of  
20 preliminary assessments, site investigations, remedial investigations,  
21 and remedial action workplans and for the implementation thereof.  
22 The documents for the preliminary assessment, site investigation,  
23 remedial investigation, and remedial action workplan required to be  
24 submitted for a remediation, shall not be identical to the criteria and  
25 standards used for similar documents submitted pursuant to federal  
26 law, except as may be required by federal law. In establishing criteria  
27 and minimum standards for these terms the department shall strive to  
28 be result oriented, provide for flexibility, and to avoid duplicate or  
29 unnecessarily costly or time consuming conditions or standards.

30 b. The regulations adopted by the department pursuant to  
31 subsection a. of this section shall provide that a person performing a  
32 remediation may deviate from the strict adherence to the regulations,  
33 in a variance procedure or by another method prescribed by the  
34 department, if that person can demonstrate that the deviation and the  
35 resulting remediation would be as protective of human health, safety,  
36 and the environment, as appropriate, as the department's regulations  
37 and that the health risk standards established in subsection d. of  
38 section 35 of P.L.1993, c.139 (C.58:10B-12) and any applicable  
39 environmental standards would be met. Factors to be considered in  
40 determining if the deviation should be allowed are whether the  
41 alternative method:

42 (1) has been either used successfully or approved by the  
43 department in writing or similar situations;

44 (2) reflects current technology as documented in peer-reviewed  
45 professional journals;

46 (3) can be expected to achieve the same or substantially the same

1 results or objectives as the method which it is to replace; and

2 (4) furthers the attainment of the goals of the specific remedial  
3 phase for which it is used.

4 The department shall make available to the public, and shall  
5 periodically update, a list of alternative remediation methods used  
6 successfully or approved by the department as provided in paragraph  
7 (1) of this subsection.

8 c. To the extent practicable and in conformance with the standards  
9 for remediations as provided in section 35 of P.L.1993, c.139  
10 (C.58:10-12), the department shall adopt rules and regulations that  
11 allow for certain remedial actions to be undertaken in a manner  
12 prescribed by the department without having to obtain prior approval  
13 from or submit detailed documentation to the department. A person  
14 who performs a remedial action in the manner prescribed in the rules  
15 and regulations of the department, and who certifies this fact to the  
16 department, shall obtain a no further action letter from the department  
17 for that particular remedial action.

18 d. The department shall develop regulatory procedures that  
19 encourage the use of innovative technologies in the performance of  
20 remedial actions and other remediation activities.

21 e. Notwithstanding any other provisions of this section, all  
22 remediation standards and remedial actions that involve real property  
23 located in the pinelands area shall be consistent with the provisions of  
24 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),  
25 any rules and regulations adopted pursuant thereto, and with section  
26 502 of the "National Parks and Recreation Act of 1978," 16  
27 U.S.C. §471i.

28 (cf: P.L.1993, c.139, s.24)

29  
30 11. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to  
31 read as follows:

32 25. a. The owner or operator of an industrial establishment or any  
33 other person required to perform remediation activities pursuant to  
34 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger <sup>2</sup>[or] <sup>2</sup>a<sup>2</sup> person  
35 in any way responsible for a hazardous substance <sup>2</sup>, or a person  
36 otherwise liable for cleanup and removal costs pursuant to P.L.1976,  
37 c.141 (C.58:10-23.11 et seq.)<sup>2</sup> who has been issued a directive or an  
38 order by a State agency, who has entered into an administrative  
39 consent order with a State agency, or who has been ordered by a  
40 court to clean up and remove a hazardous substance or hazardous  
41 waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.),  
42 shall establish and maintain a remediation funding source in the  
43 amount necessary to pay the estimated cost of the required  
44 remediation. A person who voluntarily undertakes a remediation  
45 pursuant to a memorandum of agreement with the department, or  
46 without the department's oversight, or who performs a remediation in

1 an environmental opportunity zone is not required to establish or  
2 maintain a remediation funding source. A person who uses an  
3 innovative technology or who, in a timely fashion, implements <sup>2</sup>[a  
4 permanent remedy] an unrestricted use remedial action or a limited  
5 restricted use remedial action<sup>2</sup> for all or part of a remedial action is  
6 not required to establish a remediation funding source for the cost of  
7 the remediation involving the innovative technology or permanent  
8 remedy. A person required to establish a remediation funding source  
9 pursuant to this section shall provide to the department satisfactory  
10 documentation that the requirement has been met.

11 The remediation funding source shall be established in an amount  
12 equal to or greater than the cost estimate of the implementation of the  
13 remediation (1) as approved by the department, (2) as provided in an  
14 administrative consent order or remediation agreement as required  
15 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated  
16 in a departmental order or directive, or (4) as agreed to by a court, and  
17 shall be in effect for a term not less than the actual time necessary to  
18 perform the remediation at the site. Whenever the remediation cost  
19 estimate increases, the person required to establish the remediation  
20 funding source shall cause the amount of the remediation funding  
21 source to be increased to an amount at least equal to the new estimate.  
22 Whenever the remediation or cost estimate decreases, the person  
23 required to obtain the remediation funding source may file a written  
24 request to the department to decrease the amount in the remediation  
25 funding source. The remediation funding source may be decreased to  
26 the amount of the new estimate upon written approval by the  
27 department delivered to the person who established the remediation  
28 funding source and to the trustee or the person or institution providing  
29 the remediation trust, the environmental insurance policy, or the line  
30 of credit, as applicable. The department shall approve the request  
31 upon a finding that the remediation cost estimate decreased by the  
32 requested amount. The department shall review and respond to the  
33 request to decrease the remediation funding source within 90 days of  
34 receipt of the request.

35 b. The person responsible for performing the remediation and who  
36 established the remediation funding source may use the remediation  
37 funding source to pay for the actual cost of the remediation. The  
38 department may not require any other financial assurance by the  
39 person responsible for performing the remediation other than that  
40 required in this section. In the case of a remediation performed  
41 pursuant to P.L.1983, c.330, the remediation funding source shall be  
42 established no more than 14 days after the approval by the department  
43 of a remedial action workplan or upon approval of a remediation  
44 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330  
45 (C.13:1K-9), unless the department approves an extension. In the case  
46 of a remediation performed pursuant to P.L.1976, c.141, the

1 remediation funding source shall be established as provided in an  
2 administrative consent order signed by the parties, as provided by a  
3 court, or as directed or ordered by the department. The establishment  
4 of a remediation funding source for that part of the remediation  
5 funding source to be established by a grant or financial assistance from  
6 the remediation fund may be established for the purposes of this  
7 subsection by the application for a grant or financial assistance from  
8 the remediation fund and satisfactory evidence submitted to the  
9 department that the grant or financial assistance will be awarded.  
10 However, if the financial assistance or grant is denied or the  
11 department finds that the person responsible for establishing the  
12 remediation funding source did not take reasonable action to obtain  
13 the grant or financial assistance, the department shall require that the  
14 full amount of the remediation funding source be established within 14  
15 days of the denial or finding. The remediation funding source shall be  
16 evidenced by the establishment and maintenance of (1) a remediation  
17 trust fund, (2) an environmental insurance policy, issued by an entity  
18 licensed by the Department of Insurance to transact business in the  
19 State of New Jersey, to fund the remediation, (3) a line of credit from  
20 a person or institution satisfactory to the department authorizing the  
21 person responsible for performing the remediation to borrow money,  
22 or (4) a self-guarantee, or by any combination thereof. Where it can  
23 be demonstrated that a person cannot establish and maintain a  
24 remediation funding source for the full cost of the remediation by a  
25 method specified in this subsection, that person may establish the  
26 remediation funding source for all or a portion of the remediation, by  
27 securing financial assistance from the Hazardous Discharge Site  
28 Remediation Fund as provided in section 29 of P.L.1993, c.139  
29 (C.58:10B-7).

30 c. A remediation trust fund shall be established pursuant to the  
31 provisions of this subsection. An originally signed duplicate of the  
32 trust agreement shall be delivered to the department by certified mail  
33 within 14 days of receipt of notice from the department that the  
34 remedial action workplan or remediation agreement as provided in  
35 subsection e. of section 4 of P.L.1983, c.330 is approved or as  
36 specified in an administrative consent order, civil order, or order of the  
37 department, as applicable. The remediation trust fund agreement shall  
38 conform to a model trust fund agreement as established by the  
39 department and shall be accompanied by a certification of  
40 acknowledgment that conforms to a model established by the  
41 department. The trustee shall be an entity which has the authority to  
42 act as a trustee and whose trust operations are regulated and examined  
43 by a federal or New Jersey agency.

44 The trust fund agreement shall provide that the remediation trust  
45 fund may not be revoked or terminated by the person required to  
46 establish the remediation funding source or by the trustee without the

1 written consent of the department. The trustee shall release to the  
2 person required to establish the remediation funding source, or to the  
3 department or transferee of the property, as appropriate, only those  
4 moneys as the department authorizes, in writing, to be released. The  
5 person entitled to receive money from the remediation trust fund shall  
6 submit documentation to the department detailing the costs incurred  
7 or to be incurred as part of the remediation. Upon a determination by  
8 the department that the costs are consistent with the remediation of  
9 the site, the department shall, in writing, authorize a disbursement of  
10 moneys from the remediation trust fund in the amount of the  
11 documented costs.

12 The department shall return the original remediation trust fund  
13 agreement to the trustee for termination after the person required to  
14 establish the remediation funding source substitutes an alternative  
15 remediation funding source as specified in this section or the  
16 department notifies the person that that person is no longer required  
17 to maintain a remediation funding source for remediation of the  
18 contaminated site.

19 d. An environmental insurance policy shall be established  
20 pursuant to the provisions of this subsection. An originally signed  
21 duplicate of the insurance policy shall be delivered to the department  
22 by certified mail, overnight delivery, or personal service within 30 days  
23 of receipt of notice from the department that the remedial action  
24 workplan or remediation agreement, as provided in subsection e. of  
25 section 4 of P.L.1983, c.330, is approved or as specified in an  
26 administrative consent order, civil order, or order of the department,  
27 as applicable. The environmental insurance policy may not be revoked  
28 or terminated without the written consent of the department. The  
29 insurance company shall release to the person required to establish the  
30 remediation funding source, or to the department or transferee of the  
31 property, as appropriate, only those moneys as the department  
32 authorizes, in writing, to be released. The person entitled to receive  
33 money from the environmental insurance policy shall submit  
34 documentation to the department detailing the costs incurred or to be  
35 incurred as part of the remediation.

36 e. A line of credit shall be established pursuant to the provisions  
37 of this subsection. A line of credit shall allow the person establishing  
38 it to borrow money up to a limit established in a written agreement in  
39 order to pay for the cost of the remediation for which the line of credit  
40 was established. An originally signed duplicate of the line of credit  
41 agreement shall be delivered to the department by certified mail,  
42 overnight delivery, or personal service within 14 days of receipt of  
43 notice from the department that the remedial action workplan or  
44 remediation agreement as provided in subsection e. of section 4 of  
45 P.L.1983, c.330 is approved, or as specified in an administrative  
46 consent order, civil order, or order of the department, as applicable.

1 The line of credit agreement shall conform to a model agreement as  
2 established by the department and shall be accompanied by a  
3 certification of acknowledgment that conforms to a model established  
4 by the department.

5 A line of credit agreement shall provide that the line of credit may  
6 not be revoked or terminated by the person required to obtain the  
7 remediation funding source or the person or institution providing the  
8 line of credit without the written consent of the department. The  
9 person or institution providing the line of credit shall release to the  
10 person required to establish the remediation funding source, or to the  
11 department or transferee of the property as appropriate, only those  
12 moneys as the department authorizes, in writing, to be released. The  
13 person entitled to draw upon the line of credit shall submit  
14 documentation to the department detailing the costs incurred or to be  
15 incurred as part of the remediation. Upon a determination that the  
16 costs are consistent with the remediation of the site, the department  
17 shall, in writing, authorize a disbursement from the line of credit in the  
18 amount of the documented costs.

19 The department shall return the original line of credit agreement to  
20 the person or institution providing the line of credit for termination  
21 after the person required to establish the remediation funding source  
22 substitutes an alternative remediation funding source as specified in  
23 this section, or after the department notifies the person that that  
24 person is no longer required to maintain a remediation funding source  
25 for remediation of the contaminated site.

26 f. A person may self-guarantee a remediation funding source upon  
27 the submittal of documentation to the department demonstrating that  
28 the cost of the remediation as estimated in the remedial action  
29 workplan, in the remediation agreement as provided in subsection e.  
30 of section 4 of P.L.1983, c.330, in an administrative consent order, or  
31 as provided in a departmental or court order, would not exceed  
32 one-third of the tangible net worth of the person required to establish  
33 the remediation funding source, and that the person has a cash flow  
34 sufficient to assure the availability of sufficient moneys for the  
35 remediation during the time necessary for the remediation. Satisfactory  
36 documentation of a person's capacity to self-guarantee a remediation  
37 funding source shall consist only of a statement of income and  
38 expenses or similar statement of that person and the balance sheet or  
39 similar statement of assets and liabilities as used by that person for the  
40 fiscal year of the person making the application that ended closest in  
41 time to the date of the self-guarantee application. The self-guarantee  
42 application shall be certified as true to the best of the applicant's  
43 information, knowledge, and belief, by the chief financial, or similar  
44 officer or employee, or general partner, or principal of the person  
45 making the self-guarantee application. A person shall be deemed by  
46 the department to possess the required cash flow pursuant to this

1 section if that person's gross receipts exceed its gross payments in that  
2 fiscal year in an amount at least equal to the estimated costs of  
3 completing the remedial action workplan schedule to be performed in  
4 the 12 month period following the date on which the application for  
5 self-guarantee is made. In the event that a self-guarantee is required  
6 for a period of more than one year, applications for a self-guarantee  
7 shall be renewed annually pursuant to this subsection for each  
8 successive year. The department may establish requirements and  
9 reporting obligations to ensure that the person proposing to  
10 self-guarantee a remediation funding source meets the criteria for  
11 self-guaranteeing prior to the initiation of remedial action and until  
12 completion of the remediation.

13 g. (1) If the person required to establish the remediation funding  
14 source fails to perform the remediation as required, the department  
15 shall make a written determination of this fact. A copy of the  
16 determination by the department shall be delivered to the person  
17 required to establish the remediation funding source and, in the case  
18 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6  
19 et al.), to any transferee of the property. Following this written  
20 determination, the department may perform the remediation in place  
21 of the person required to establish the remediation funding source. In  
22 order to finance the cost of the remediation the department may make  
23 disbursements from the remediation trust fund or the line of credit or  
24 claims upon the environmental insurance policy, as appropriate, or, if  
25 sufficient moneys are not available from those funds, from the  
26 remediation guarantee fund created pursuant to section 45 of  
27 P.L.1993, c.139 (C.58:10B-20).

28 (2) The transferee of property subject to a remediation conducted  
29 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after  
30 the department's determination of nonperformance by the owner or  
31 operator required to establish the remediation funding source, petition  
32 the department, in writing, with a copy being sent to the owner and  
33 operator, for authority to perform the remediation at the industrial  
34 establishment. The department, upon a determination that the  
35 transferee is competent to do so, may grant that petition which shall  
36 authorize the transferee to perform the remediation as specified in an  
37 approved remedial action workplan, or to perform the activities as  
38 required in a remediation agreement, and to avail itself of the moneys  
39 in the remediation trust fund or line of credit or to make claims upon  
40 the environmental insurance policy for these purposes. The petition  
41 of the transferee shall not be granted by the department if the owner  
42 or operator continues or begins to perform its obligations within 14  
43 days of the petition being filed with the department.

44 (3) After the department has begun to perform the remediation in  
45 the place of the person required to establish the remediation funding  
46 source or has granted the petition of the transferee to perform the

1 remediation, the person required to establish the remediation funding  
2 source shall not be permitted by the department to continue its  
3 performance obligations except upon the agreement of the department  
4 or the transferee, as applicable, or except upon a determination by the  
5 department that the transferee is not adequately performing the  
6 remediation.

7 (cf: P.L.1993, c.139, s.25)

8  
9 12. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to  
10 read as follows:

11 26. a. There is established in the New Jersey Economic  
12 Development Authority a special, revolving fund to be known as the  
13 Hazardous Discharge Site Remediation Fund. Moneys in the  
14 remediation fund shall be dedicated for the provision of financial  
15 assistance or grants to municipal governmental entities, the New  
16 Jersey Redevelopment Authority, individuals, corporations,  
17 partnerships, and other private business entities, for the purpose of  
18 financing remediation activities at sites at which there is, or is  
19 suspected of being, a discharge of hazardous substances or hazardous  
20 wastes.

21 b. The remediation fund shall be credited with:

22 (1) moneys as are appropriated by the Legislature;

23 (2) moneys deposited into the fund as repayment of principal and  
24 interest on outstanding loans made from the fund;

25 (3) any return on investment of moneys deposited in the fund;

26 (4) remediation funding source surcharges imposed pursuant to  
27 section 33 of P.L.1993, c.139 (C.58:10B-11);

28 (5) moneys deposited into the fund from cost recovery  
29 subrogation actions; and

30 (6) moneys made available to the authority for the purposes of the  
31 fund.

32 (cf: P.L.1993, c.139, s.26)

33  
34 13. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to  
35 read as follows:

36 27. a. (1) Financial assistance from the remediation fund [, made  
37 to persons other than municipal governmental entities, the New Jersey  
38 Redevelopment Authority, or to persons who voluntarily undertake a  
39 remediation,] may only be rendered to persons who cannot establish  
40 a remediation funding source for the full amount of a remediation.  
41 Financial assistance pursuant to this act may be rendered only for that  
42 amount of the cost of a remediation for which the person cannot  
43 establish a remediation funding source. The limitations on receiving  
44 financial assistance established in this paragraph (1) shall not limit the  
45 ability of municipal governmental entities, the New Jersey  
46 Redevelopment Authority, persons who are not required to establish

1 a remediation funding source for the part of the remediation involving  
2 an innovative technology <sup>2</sup>[or a permanent remedy] , an unrestricted  
3 use remedial action or a limited restricted use remedial action <sup>2</sup> ,  
4 persons performing a remediation in an environmental opportunity  
5 zone, or persons who voluntarily perform a remediation <sup>2</sup> <sup>2</sup> to receive  
6 financial assistance from the fund.

7 (2) Financial assistance rendered to persons who voluntarily  
8 [undertake] perform a remediation or perform a remediation in an  
9 environmental opportunity zone may only be made for that amount of  
10 the cost of the remediation that the person cannot otherwise fund by  
11 any of the authorized methods to establish a remediation funding  
12 source.

13 (3) Financial assistance rendered to persons who do not have to  
14 provide financial assurance for the part of the remediation that  
15 involves an innovative technology <sup>2</sup>[or a permanent remedy] , an  
16 unrestricted use remedial action, or a limited restricted use remedial  
17 action<sup>2</sup> may only be made for that amount of the cost of the  
18 remediation that the person cannot otherwise fund by any of the  
19 authorized methods to establish a remediation funding source.

20 b. Financial assistance may be rendered from the remediation fund  
21 to (1) owners or operators of industrial establishments who are  
22 required to perform remediation activities pursuant to P.L.1983, c.330  
23 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of  
24 ownership or operations of an industrial establishment, (2) persons  
25 who <sup>2</sup>[have discharged a hazardous substance or who are in any way  
26 responsible for] are liable for the cleanup and removal costs of<sup>2</sup> a  
27 hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et  
28 seq.), and (3) persons who voluntarily [undertake the] perform a  
29 remediation of a discharge of a hazardous substance or hazardous  
30 waste [and who have not been ordered or directed to perform the  
31 remediation by the department or by a court].

32 c. Financial assistance and grants may be made from the  
33 remediation fund to municipal governmental entities or the New Jersey  
34 Redevelopment Authority that own or hold a tax sale certificate on  
35 real property or that have acquired real property through foreclosure  
36 or other similar means, or by voluntary conveyance for the purpose of  
37 redevelopment, and on which there has been a discharge or on which  
38 there is a suspected discharge of a hazardous substance or hazardous  
39 waste [or the New Jersey Redevelopment Authority established  
40 pursuant to P.L.1996, c.62 (C.55:19-20 et al.) for any such real  
41 property upon which the New Jersey Redevelopment Authority owns  
42 or holds the tax sale certificate]. Financial assistance <sup>2</sup>and grants<sup>2</sup> may  
43 not be made to any entity listed in this subsection for any real property  
44 used by that entity for the conduct of its official business.

45 d. Grants may be made from the remediation fund to persons [,  
46 including] and the New Jersey Redevelopment Authority, [other than

1 other governmental entities] who own real property on which there  
2 has been a discharge of a hazardous substance or a hazardous waste  
3 and that person or the authority qualifies for an innocent party grant  
4 pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

5 e. Grants may be made from the remediation fund to qualifying  
6 persons who propose to perform a remedial action that uses an  
7 innovative technology or that would result in <sup>2</sup>[a permanent remedy]  
8 an unrestricted use remedial action or a limited restricted use remedial  
9 action<sup>2</sup>.

10 For the purposes of this section, "person" shall not include [the  
11 New Jersey Redevelopment Authority established pursuant to  
12 P.L.1996, c.62 (C.55:19-20 et al.)] any governmental entity.  
13 (cf: P.L.1996, c.62, s.64)

14  
15 14. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to  
16 read as follows:

17 28. a. Except for moneys deposited in the remediation fund for  
18 specific purposes, financial assistance and grants from the remediation  
19 fund shall be rendered for the following purposes and, on an annual  
20 basis, obligated in the percentages as provided in this subsection.  
21 Upon a written joint determination by the authority and the department  
22 that [it is in the public interest] the demand for financial assistance or  
23 grants for moneys allocated in any paragraph exceeds the percentage  
24 of funds allocated for that paragraph, financial assistance and grants  
25 dedicated for the purposes and in the percentages set forth in any other  
26 paragraph [(1), (2), or (3)] of this subsection, may, for any particular  
27 year, if the demand for financial assistance or grants for moneys  
28 allocated in that paragraph is less than the percentage of funds  
29 allocated for that paragraph, be obligated to [other] the purposes set  
30 forth in [this subsection] the over allocated paragraph. The written  
31 determination shall be sent to the Senate Environment Committee, and  
32 the Assembly Agriculture and Waste Management Committee, or their  
33 successors. For the purposes of this section, "person" shall not  
34 include [the New Jersey Redevelopment Authority established  
35 pursuant to P.L.1996, c.62 (C.55:19-20 et al.)] any governmental  
36 entity.

37 (1) At least 15% of the moneys shall be allocated for financial  
38 assistance to persons, [including] and the New Jersey Redevelopment  
39 Authority [other than other governmental entities,] established  
40 pursuant to P.L.1996, c.62 (C.55:19-20 et al.), for remediation of real  
41 property located in a qualifying municipality as defined in section 1 of  
42 P.L.1978, c.14 (C.52:27D-178);

43 (2) At least 10% of the moneys shall be allocated for financial  
44 assistance and grants to municipal governmental entities and the New  
45 Jersey Redevelopment Authority that [hold] owns or holds a tax sale  
46 certificate on real property or have acquired real property through

1 foreclosure or other similar means [real property] , or by voluntary  
 2 conveyance for the purpose of redevelopment, on which there has been  
 3 or on which there is suspected of being a discharge of hazardous  
 4 substances or hazardous wastes [or the New Jersey Redevelopment  
 5 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),  
 6 for any such real property upon which the New Jersey Redevelopment  
 7 Authority owns or holds the tax sale certificate]. Grants provided  
 8 pursuant to this paragraph shall be used for performing preliminary  
 9 assessments, site investigations, and remedial investigations on real  
 10 property [acquired by a municipal governmental entity the New Jersey  
 11 Redevelopment Authority, as the case may be, or on which the  
 12 municipality the New Jersey Redevelopment Authority owns or holds  
 13 a tax sale certificate,] in order to determine the existence or extent of  
 14 any hazardous substance or hazardous waste contamination on those  
 15 properties. A municipal governmental entity or the New Jersey  
 16 Redevelopment Authority that has performed, or on which there has  
 17 been performed, a preliminary assessment, site investigation [and] or  
 18 remedial investigation on property [or the New Jersey Redevelopment  
 19 Authority, in any case where the New Jersey Redevelopment Authority  
 20 has performed the preliminary assessment, site investigation, and  
 21 remedial investigation] may obtain a loan for the purpose of continuing  
 22 the remediation on those properties [it owns] as necessary to comply  
 23 with the applicable remediation [standards] regulations adopted by  
 24 the department;

25 (3) At least 15% of the moneys shall be allocated for financial  
 26 assistance to persons, [including] the New Jersey Redevelopment  
 27 Authority, or municipal governmental entities for remediation activities  
 28 at sites that have been contaminated by a discharge of a hazardous  
 29 substance or hazardous waste, or at which there is an imminent and  
 30 significant threat of a discharge of a hazardous substance or hazardous  
 31 waste, and the discharge or threatened discharge poses or would pose  
 32 an imminent and significant threat to a drinking water source, to  
 33 human health, or to a sensitive or significant ecological area;

34 (4) At least 10% of the moneys shall be allocated for financial  
 35 assistance to persons [, other than municipal governmental entities,]  
 36 who voluntarily [undertake the] perform a remediation of a hazardous  
 37 substance or hazardous waste discharge [, and who have not been  
 38 ordered to undertake the remediation by the department or by a  
 39 court];

40 (5) At least [20%] 15% of the moneys shall be allocated for  
 41 financial assistance to persons [, other than municipal governmental  
 42 entities,] who are required to perform remediation activities at an  
 43 industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et  
 44 al.), as a condition of the closure, transfer, or termination of  
 45 operations at that industrial establishment;

46 (6) At least [20%] 15% of the moneys shall be allocated for grants

1 to persons [, other than municipal governmental entities,] who own  
2 real property on which there has been a discharge of a hazardous  
3 substance or a hazardous waste and that person qualifies for an  
4 innocent party grant. A person qualifies for an innocent party grant if  
5 that person acquired the property prior to December 31, 1983, except  
6 as provided hereunder, the hazardous substance or hazardous waste  
7 that was discharged at the property was not used by the person at that  
8 site, and that person certifies that he did not discharge any hazardous  
9 substance or hazardous waste at an area where a discharge is  
10 discovered; provided, however, that [if the person is] notwithstanding  
11 any other provision of this section the New Jersey Redevelopment  
12 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),  
13 [the authority] shall qualify for an innocent party grant pursuant to this  
14 paragraph where the immediate predecessor in title to the authority  
15 would have qualified for but failed to apply for or receive such grant.  
16 A grant authorized pursuant to this paragraph may be for up to 50%  
17 of the remediation costs at the area of concern for which the person  
18 qualifies for an innocent party grant, except that no grant awarded  
19 pursuant to this paragraph to any person [including] or the New Jersey  
20 Redevelopment Authority may exceed \$1,000,000;

21 (7) At least 5% of the moneys shall be allocated for [loans]  
22 financial assistance to persons [, other than municipal governmental  
23 entities,] who own and plan to remediate an environmental opportunity  
24 zone for which an exemption from real property taxes has been  
25 granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154);  
26 [and]

27 (8) At least 5% of the moneys shall be allocated for matching  
28 grants for up to 25% of the project costs to qualifying persons who  
29 propose to perform a remedial action that uses an innovative  
30 technology except that no grant awarded pursuant to this paragraph  
31 to any qualifying person may exceed \$100,000;

32 (9) At least 5% of the moneys shall be allocated for matching  
33 grants for up to 25% of the project costs to qualifying persons for the  
34 implementation of a <sup>2</sup>[permanent] limited restricted use remedial  
35 action or an unrestricted use<sup>2</sup> remedial action except that no grant  
36 awarded pursuant to this paragraph to any qualifying person may  
37 exceed \$100,000. The authority may use money allocated pursuant to  
38 this paragraph to provide loan guarantees to encourage financial  
39 institutions to provide loans to any person who may receive financial  
40 assistance from the fund who plans to implement a <sup>2</sup>[permanent]  
41 limited restricted use remedial action or an unrestricted use<sup>2</sup> remedial  
42 action; and

43 (10) Five percent of the moneys in the remediation fund shall be  
44 allocated for financial assistance or grants for any of the purposes  
45 enumerated in paragraphs (1) through [(7)] (9) of this subsection,  
46 except that where moneys in the fund are insufficient to fund all the

1 applications in any calendar year that would otherwise qualify for  
2 financial assistance or a grant pursuant to this paragraph, the authority  
3 shall give priority to financial assistance applications that meet the  
4 criteria enumerated in paragraph (3) of this subsection.

5 For the purposes of paragraphs (8) and (9) of this subsection,  
6 "qualifying persons" means any person who has a net worth of not  
7 more than \$2,000,000 <sup>2</sup>and "project costs" means that portion of the  
8 total costs of a remediation that is specifically for the use of an  
9 innovative technology or to implement an unrestricted use remedial  
10 action or a limited restricted use remedial action, as applicable<sup>2</sup> .

11 b. Loans issued from the remediation fund shall be for a term not  
12 to exceed ten years, except that upon the transfer of ownership of any  
13 real property for which the loan was made, the unpaid balance of the  
14 loan shall become immediately payable in full. Loans to municipal  
15 governmental entities and the New Jersey Redevelopment Authority  
16 established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), shall bear  
17 an interest rate equal to 2 points below the Federal Discount Rate at  
18 the time of approval or at the time of loan closing, whichever is lower,  
19 except that the rate shall be no lower than 3 percent. All other loans  
20 shall bear an interest rate equal to the Federal Discount Rate at the  
21 time of approval or at the time of the loan closing, whichever is lower,  
22 except that the rate on such loans shall be no lower than five percent.  
23 Financial assistance and grants may be issued for up to 100% of the  
24 estimated applicable remediation cost, except that the cumulative  
25 maximum amount of financial assistance which may be issued to a  
26 person [other than a governmental entity, including the New Jersey  
27 Redevelopment Authority], in any calendar year, for one or more  
28 properties, shall be \$1,000,000. Financial assistance and grants to any  
29 one municipal governmental entity [, including] or the New Jersey  
30 Redevelopment Authority [.] may not exceed \$2,000,000 in any  
31 calendar year. Repayments of principal and interest on the loans  
32 issued from the remediation fund shall be paid to the authority and  
33 shall be deposited into the remediation fund.

34 c. No person, other than [a municipal governmental entity, the  
35 New Jersey Redevelopment Authority] a qualified person planning to  
36 use an innovative technology for the cost of that technology, a  
37 qualified person planning to use a <sup>2</sup>[permanent remedy] limited  
38 restricted use remedial action or an unrestricted use remedial action<sup>2</sup>  
39 for the cost of the remedial action, a person performing a remediation  
40 in an environmental opportunity zone, or a person [engaging in a  
41 voluntary] voluntarily performing a remediation, shall be eligible for  
42 financial assistance from the remediation fund to the extent that person  
43 is capable of establishing a remediation funding source for the  
44 remediation as required pursuant to section 25 of P.L.1993, c.139  
45 (C.58:10B-3).

46 d. The authority may use a sum that represents up to 2% of the

1 moneys issued as financial assistance or grants from the remediation  
2 fund each year for administrative expenses incurred in connection with  
3 the operation of the fund and the issuance of financial assistance and  
4 grants.

5 e. Prior to March 1 of each year, the authority shall submit to the  
6 Senate Environment Committee and the Assembly Agriculture and  
7 Waste Management Committee, or their successors, a report detailing  
8 the amount of money that was available for financial assistance and  
9 grants from the remediation fund for the previous calendar year, the  
10 amount of money estimated to be available for financial assistance and  
11 grants for the current calendar year, the amount of financial assistance  
12 and grants issued for the previous calendar year and the category for  
13 which each financial assistance and grant was rendered, and any  
14 suggestions for legislative action the authority deems advisable to  
15 further the legislative intent to facilitate remediation and promote the  
16 redevelopment and use of existing industrial sites.

17 (cf: P.L.1996, c.62, s.65)

18

19 15. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to  
20 read as follows:

21 30. a. The authority shall, by rule or regulation:

22 (1) require a financial assistance or grant recipient to provide to  
23 the authority, as necessary or upon request, evidence that financial  
24 assistance or grant moneys are being spent for the purposes for which  
25 the financial assistance or grant was made, and that the applicant is  
26 adhering to all of the terms and conditions of the financial assistance  
27 or grant agreement;

28 (2) require the financial assistance or grant recipient to provide  
29 access at reasonable times to the subject property to determine  
30 compliance with the terms and conditions of the financial assistance or  
31 grant;

32 (3) establish a priority system for rendering financial assistance or  
33 grants for remediations identified by the department as involving an  
34 imminent and significant threat to a public water source, human health,  
35 or to a sensitive or significant ecological area pursuant to paragraph  
36 [(7)] (3) of subsection a. of section 28 of P.L.1993, c.139  
37 (C.58:10B-6);

38 (4) provide that payment of a grant shall be conditioned upon the  
39 subrogation to the department of all rights of the recipient to recover  
40 remediation costs from the discharger or other <sup>2</sup>[responsible party]  
41 liable parties<sup>2</sup>. All moneys collected in a cost recovery subrogation  
42 action shall be deposited into the remediation fund;

43 (5) provide that an applicant for financial assistance or a grant pay  
44 a reasonable fee for the application which shall be used by the  
45 authority for the administration of the loan and grant program;

46 (6) provide that where financial assistance to a person other than

1 a municipal governmental entity [,] or the New Jersey Redevelopment  
2 Authority is for a portion of the remediation cost, that the proceeds  
3 thereof not be disbursed to the applicant until the costs of the  
4 remediation for which a remediation funding source has been  
5 established has been expended;

6 (7) adopt such other requirements as the authority shall deem  
7 necessary or appropriate in carrying out the purposes for which the  
8 Hazardous Discharge Site Remediation Fund was created.

9 b. An applicant for financial assistance or a grant shall be required  
10 to:

11 (1) provide proof, as determined sufficient by the authority, that  
12 the applicant, where applicable, cannot establish a remediation funding  
13 source for all or part of the remediation costs, as required by section  
14 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph  
15 do not apply to grants to innocent persons <sup>2</sup>[or] . grants<sup>2</sup> for the use  
16 of innovative technologies<sup>2</sup> .<sup>2</sup> or <sup>2</sup>[for a permanent remedy] grants for  
17 the implementation of unrestricted use remedial actions or limited  
18 restricted use remedial actions<sup>2</sup> or to financial assistance or grants to  
19 municipal governmental entities or the New Jersey Redevelopment  
20 Authority; and

21 (2) demonstrate the ability to repay the amount of the financial  
22 assistance and interest, and, if necessary, to provide adequate  
23 collateral to secure the financial assistance amount.

24 c. Information submitted as part of a loan or grant application or  
25 agreement shall be deemed a public record subject to the provisions of  
26 P.L.1963, c.73 (C.47:1A-1 et seq.).

27 d. In establishing requirements for financial assistance or grant  
28 applications and financial assistance or grant agreements, the  
29 authority:

30 (1) shall minimize the complexity and costs to applicants or  
31 recipients of complying with such requirements;

32 (2) may not require financial assistance or grant conditions that  
33 interfere with the everyday normal operations of the recipient's  
34 business activities, except to the extent necessary to ensure the  
35 recipient's ability to repay the financial assistance and to preserve the  
36 value of the loan collateral; and

37 (3) shall expeditiously process all financial assistance or grant  
38 applications in accordance with a schedule established by the authority  
39 for the review and the taking of final action on the application, which  
40 schedule shall reflect the degree of complexity of a financial assistance

1 or grant application.

2 (cf: P.L.1993, c.139, s.30)

3

4 16. Section 33 of P.L.1993, c.139 (C.58:10B-11) is amended to  
5 read as follows:

6 33. a. There is imposed upon every person who is required to  
7 establish a remediation funding source pursuant to section 25 of  
8 P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge.  
9 The remediation funding source surcharge shall be in an amount equal  
10 to 1% of the required amount of the remediation funding source  
11 required by the department to be maintained. No surcharge, however,  
12 may be imposed upon (1) that amount of the remediation funding  
13 source that is met by a self-guarantee as provided in subsection f. of  
14 section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the  
15 remediation funding source that is met by financial assistance or a  
16 grant from the remediation fund, (3) any person who voluntarily  
17 ~~[undertakes]~~ performs a remediation ~~[without being so ordered or~~  
18 ~~directed by the department or by a court or]~~ pursuant to an  
19 administrative consent order, ~~[or]~~ (4) any person who entered  
20 voluntarily into a memorandum of understanding with the department  
21 to remediate real property, as long as that person continues the  
22 remediation in a reasonable manner, or as required by law, even if  
23 subsequent to initiation of the memorandum of understanding, the  
24 person received an order by the department or entered into an  
25 administrative consent order to perform the remediation, ~~(5) any~~  
26 ~~person performing a remediation in an environmental opportunity~~  
27 ~~zone, or (6) that~~ <sup>2</sup>[amount] portion<sup>2</sup> of the cost of the remediation that  
28 is <sup>2</sup>specifically<sup>2</sup> for the use of an innovative technology or to  
29 implement a <sup>2</sup>[permanent remedy] limited restricted use remedial  
30 action or an unrestricted use remedial action<sup>2</sup>. The surcharge shall be  
31 based on the cost of remediation work remaining to be completed and  
32 shall be paid on an annual basis as long as the remediation continues  
33 and until the Department of Environmental Protection ~~[and Energy]~~  
34 issues a no further action letter for the property subject to the  
35 remediation. The remediation funding source surcharge shall be due  
36 and payable within 14 days of the time of the department's approval of  
37 a remedial action workplan or signing an administrative consent order  
38 or as otherwise provided by law. The department shall collect the  
39 surcharge and shall remit all moneys collected to the Economic  
40 Development Authority for deposit into the Hazardous Discharge Site  
41 Remediation Fund.

42 b. By February 1 of each year, the department shall issue a report  
43 to the Senate Environment Committee and to the Assembly ~~[Energy~~  
44 ~~and Hazardous Waste]~~ Agriculture and Waste Management  
45 Committee, or their successors, listing, for the prior calendar year,  
46 each person who owed the remediation funding source surcharge, the

1 amount of the surcharge paid, and the total amount collected.  
2 (cf: P.L.1993, c.139, s.33)

3  
4 17. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to  
5 read as follows:

6 35. a. The Department of Environmental Protection [and Energy]  
7 shall adopt minimum remediation standards for soil, groundwater, and  
8 surface water quality necessary for the remediation of contamination  
9 of real property. The remediation standards shall be developed to  
10 ensure that the potential for harm to public health and safety and to the  
11 environment is minimized to acceptable levels, taking into  
12 consideration the location, the surroundings, the intended use of the  
13 property, the potential exposure to the discharge, and the surrounding  
14 ambient conditions, whether naturally occurring or man-made.

15 Until the minimum remediation standards for the protection of  
16 public health and safety as described herein are adopted, the  
17 department shall apply public health and safety remediation standards  
18 for contamination at a site on a case-by-case basis based upon the  
19 considerations and criteria enumerated in this section.

20 The department shall not propose or adopt remediation standards  
21 protective of the environment pursuant to this section, except  
22 standards for groundwater or surface water, until recommendations  
23 are made by the Environment Advisory Task Force created pursuant  
24 to section 37 of P.L.1993, c.139. Until the Environment Advisory  
25 Task Force issues its recommendations and the department adopts  
26 remediation standards protective of the environment as required by  
27 this section, the department shall continue to determine the need for  
28 and the application of remediation standards protective of the  
29 environment on a case-by-case basis in accordance with the guidance  
30 and regulations of the United States Environmental Protection Agency  
31 pursuant to the "Comprehensive Environmental Response,  
32 Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and  
33 other statutory authorities as applicable.

34 The department may not require any person to perform an  
35 ecological evaluation of any area of concern that consists of an  
36 underground storage tank storing heating oil for on-site consumption  
37 in a one to four family residential building.

38 b. In developing minimum remediation standards the department  
39 shall:

40 (1) base the standards on generally accepted and peer reviewed  
41 scientific evidence or methodologies;

42 (2) base the standards upon reasonable assumptions of exposure  
43 scenarios as to amounts of contaminants to which humans or other  
44 receptors will be exposed, when and where those exposures will occur,  
45 and the amount of that exposure;

46 (3) avoid the use of redundant conservative assumptions. The

department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which guidelines make use of the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable; <sup>2</sup>[and]<sup>2</sup>

(4) where feasible, establish the remediation standards as numeric or narrative standards setting forth acceptable levels or concentrations for particular contaminants <sup>2</sup>; and

(5) consider and utilize, in the absence of other standards used or developed by the Department of Environmental Protection and the United States Environmental Protection Agency, the toxicity factors, slope factors for carcinogens and reference doses for non-carcinogens from the United States Environmental Protection Agency's Integrated Risk Information System (IRIS)<sup>2</sup>.

c. (1) The department shall develop <sup>2</sup>[permanent]<sup>2</sup> residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and transportable to groundwater or surface water, the <sup>2</sup>[permanent]<sup>2</sup> residential and nonresidential soil remediation standards shall be protective of groundwater and surface water. [Residential] <sup>2</sup>[Permanent residential] Residential<sup>2</sup> soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without the need of engineering devices or any institutional controls and without exceeding a health risk [level] standard greater than that provided in subsection d. of this section. [Nonresidential] <sup>2</sup>[Permanent nonresidential] Nonresidential<sup>2</sup> soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses, which will allow for the unrestricted use of that property for nonresidential purposes, and that can be met without the need of engineering controls. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require, pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

(2) The department may develop differential remediation standards for surface water or groundwater that take into account the current, planned, or potential use of that water in accordance with the "Clean

1 Water Act" (33 U.S.C. §1251 et seq.) and the "Water Pollution  
2 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

3 d. [In developing] The department shall develop minimum  
4 remediation standards for soil, groundwater, and surface water  
5 intended to be protective of public health and safety [.] taking into  
6 account the provisions of this section. In developing these minimum  
7 health risk remediation standards the department shall identify the  
8 hazards posed by a contaminant to determine whether exposure to that  
9 contaminant can cause an increase in the incidence of an adverse health  
10 effect and whether the adverse health effect may occur in humans.  
11 The department shall set minimum soil remediation health risk  
12 standards for both residential and nonresidential uses that:

13 (1) for human carcinogens, as categorized by the United States  
14 Environmental Protection Agency, will result in an additional cancer  
15 risk of one in one million;

16 (2) for noncarcinogens, will limit the Hazard Index for any given  
17 effect to a value not exceeding one.

18 The health risk [levels] standards established in this subsection are  
19 for any particular contaminant and not for the cumulative effects of  
20 more than one contaminant at a site.

21 e. Remediation standards and other remediation requirements  
22 established pursuant to this section and regulations adopted pursuant  
23 thereto shall apply to remediation activities required pursuant to the  
24 "Spill Compensation and Control Act," P.L.1976, c.141  
25 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977,  
26 c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the  
27 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the  
28 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.),  
29 the "Comprehensive Regulated Medical Waste Management Act,"  
30 P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste  
31 Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the  
32 "Sanitary Landfill Facility Closure and Contingency Fund Act,"  
33 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level  
34 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333  
35 (C.13:1E-177 et seq.), or any other law or regulation by which the  
36 State may compel a person to perform remediation activities on  
37 contaminated property. However, nothing in this subsection shall be  
38 construed to limit the authority of the department to establish  
39 discharge limits for pollutants or to prescribe penalties for violations  
40 of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to  
41 require the complete removal of nonhazardous solid waste pursuant to  
42 law.

43 f. (1) A person performing a remediation of contaminated real  
44 property, in lieu of using the established minimum <sup>2</sup>[permanent]<sup>2</sup> soil  
45 remediation standard for either residential use or nonresidential use  
46 adopted by the department pursuant to subsection c. of this section,

1 may submit to the department a request to use an alternative  
2 residential use <sup>2</sup>[permanent]<sup>2</sup> or nonresidential use soil remediation  
3 standard. The use of an alternative soil remediation standard shall be  
4 based upon site specific factors which may include (1) physical site  
5 characteristics which may vary from those used by the department in  
6 the development of the soil remediation standards adopted pursuant to  
7 this section; or (2) a site specific risk assessment. If a person  
8 performing a remediation requests to use an alternative soil  
9 remediation standard based upon a site specific risk assessment, that  
10 person shall demonstrate to the department that the requested  
11 deviation from the risk assessment protocol used by the department in  
12 the development of soil remediation standards pursuant to this section  
13 is consistent with the guidance and regulations for exposure  
14 assessment developed by the United States Environmental Protection  
15 Agency pursuant to the "Comprehensive Environmental Response,  
16 Compensation, and Liability Act of 1980," 42 U.S.C. §9601 et seq.  
17 and other statutory authorities as applicable. A site specific risk  
18 assessment may consider exposure scenarios and assumptions that take  
19 into account the form of the contaminant present, natural  
20 biodegradation, fate and transport of the contaminant, <sup>2</sup>[and] <sup>2</sup>  
21 available toxicological data that are based upon generally accepted and  
22 peer reviewed scientific evidence or methodologies <sup>2</sup>, and physical  
23 characteristics of the site, including, but not limited to, climatic  
24 conditions and topographic conditions. Nothing in this subsection  
25 shall be construed to authorize the use of an alternative soil  
26 remediation standard in those instances where an engineering control  
27 is the appropriate remedial action, as determined by the department,  
28 to prevent exposure to contamination<sup>2</sup>.

29 Upon a determination by the department that the requested  
30 alternative remediation standard <sup>2</sup>satisfies the department's  
31 regulations,<sup>2</sup> is protective of public health and safety, as established in  
32 subsection d. of this section, and <sup>2</sup>is<sup>2</sup> protective of the environment  
33 pursuant to subsection a. of this section, the alternative residential use  
34 or nonresidential use soil remediation standard shall be approved by  
35 the department. <sup>2</sup>The burden to demonstrate that the requested  
36 alternative remediation standard is protective rests with the person  
37 requesting the alternative standard and the department may require the  
38 submission of any documentation as the department determines to be  
39 necessary in order for the person to meet that burden.<sup>2</sup>

40 (2) The department may, upon its own initiative, require an  
41 alternative remediation standard for a particular contaminant for a  
42 specific real property site, in lieu of using the established minimum  
43 <sup>2</sup>[permanent]<sup>2</sup> residential use or nonresidential use soil remediation  
44 standard adopted by the department for a particular contaminant  
45 pursuant to this section. The department may require an alternative  
46 remediation standard pursuant to this paragraph upon a determination

1 by the department, based on the weight of the scientific evidence, that  
2 due to specific physical site characteristics of the subject real property,  
3 <sup>2</sup>including, but not limited to, its proximity to surface water,<sup>2</sup> the use  
4 of the adopted residential use or nonresidential use soil remediation  
5 standards would not be protective <sup>2</sup>, or would be unnecessarily  
6 overprotective,<sup>2</sup> of public health or safety or of the environment, as  
7 appropriate.

8 g. The development, selection, and implementation of any  
9 remediation standard or remedial action shall ensure that it is  
10 protective of public health, safety, and the environment, as applicable,  
11 as provided in this section. In determining the appropriate remediation  
12 standard or remedial action that shall occur at a site [in order to meet  
13 the established remediation standards], the department [, or] and any  
14 person performing the remediation, shall base [its] the decision on the  
15 following factors:

16 (1) <sup>2</sup>[Permanent and nonpermanent] Unrestricted use remedial  
17 actions, limited restricted use remedial actions and restricted use<sup>2</sup>  
18 [remedies] remedial actions shall be allowed except that <sup>2</sup>[permanent  
19 remedies] unrestricted use remedial actions and limited restricted use  
20 remedial actions<sup>2</sup> shall be preferred over <sup>2</sup>[nonpermanent remedies  
21 for] restricted use<sup>2</sup> remedial actions. The department, however, may  
22 not disapprove the use of a <sup>2</sup>[nonpermanent] restricted use remedial  
23 action or a limited restricted use<sup>2</sup> remedial action so long as the  
24 selected remedial action meets the health risk standard established in  
25 subsection d. of this section, and where, as applicable, is protective of  
26 the environment. The choice of the remedial action to be implemented  
27 shall be made by the person performing the remediation <sup>2</sup>in accordance  
28 with regulations adopted by the department<sup>2</sup> and that choice of the  
29 remedial action shall be approved by the department if all the criteria  
30 for remedial action selection enumerated in this section <sup>2</sup>, as  
31 applicable,<sup>2</sup> are met. The department may not require a person to  
32 compare or investigate any alternative remedial action as part of its  
33 review of the selected remedial action.

34 (2) Contamination may, upon the department's approval, be left  
35 onsite at levels or concentrations that exceed the minimum soil  
36 remediation standards for residential use [or nonresidential use] if the  
37 implementation of institutional or engineering controls at that site will  
38 result in the protection of public health, safety and the environment at  
39 the health risk [level] standard established in subsection d. of this  
40 section and if the requirements established in subsections a., b., c. and  
41 d. of section 36 of P.L.1993, c.139 (C.58:10B-13) are met;

42 (3) Real property on which there is soil that has not been  
43 remediated to the residential soil remediation standards, or real  
44 property on which the soil, groundwater, or surface water has been  
45 remediated to meet the required health risk [level] standard by the use  
46 of engineering or institutional controls, may be developed or used for

1 residential purposes, or for any other similar purpose, if (a) all areas  
2 of that real property at which a person may come into contact with soil  
3 are remediated to meet the residential soil remediation standards and  
4 (b) it is clearly demonstrated that for all areas of the real property,  
5 other than those described in subparagraph (a) above, engineering and  
6 institutional controls can be implemented and maintained on the real  
7 property sufficient to meet the health risk [level] standard as  
8 established in subsection d. of this section;

9 (4) Remediation shall not be required beyond the regional natural  
10 background levels for any particular contaminant. The department  
11 shall develop regulations that set forth a process to identify  
12 background levels of contaminants for a particular region. For the  
13 purpose of this paragraph "regional natural background levels" means  
14 the concentration of a contaminant consistently present in the  
15 environment of the region of the site and which has not been  
16 influenced by localized human activities;

17 (5) Remediation shall not be required of the owner or operator of  
18 real property for contamination coming onto the site from another  
19 property owned and operated by another person, unless the owner or  
20 operator is the person who <sup>2</sup>[has discharged the contaminant or is in  
21 any way responsible for the [discharge] contaminant] is liable for  
22 cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-  
23 23.11 et seq.)<sup>2</sup> ;

24 (6) Groundwater that is contaminated shall not be required to be  
25 remediated to a level or concentration for any particular contaminant  
26 lower than the level or concentration that is migrating onto the  
27 property from another property owned and operated by another  
28 person;

29 (7) The technical performance, effectiveness and reliability of the  
30 proposed remedial action in attaining and maintaining compliance with  
31 applicable remediation standards and required health risk [levels]  
32 standards shall be considered. In reviewing a proposed remedial  
33 action, the department shall also consider the ability of the owner or  
34 operator to implement the proposed remedial action within a  
35 reasonable time frame without jeopardizing public health, safety or the  
36 environment;

37 (8) [In the case of a proposed remedial action that will not meet  
38 the established minimum residential use soil remediation standards, the  
39 cost of all available permanent remedies is unreasonable, as determined  
40 by department rules designed to provide a cost-based preference for  
41 the use of permanent remedies. The department shall adopt  
42 regulations, no later than 18 months after the effective date of this act,  
43 establishing criteria and procedures for allowing a person to  
44 demonstrate that the cost of all available permanent remedies is  
45 unreasonable. Until the department adopts those regulations, it shall  
46 not require a person performing a remedial action to implement a

1 permanent remedy, unless the cost of implementing a nonpermanent  
2 remedy is 50 percent or more than the cost of implementing a  
3 permanent remedy; provided, however, that the preceding provision  
4 shall not apply to any owner or operator of an industrial establishment  
5 who is implementing a remedial action pursuant to subsection i. of  
6 section 4 of P.L.1983, c.330;] The use of a remedial action for soil  
7 contamination that is determined by the department to be effective in  
8 its guidance document created pursuant to section 38 of P.L.1993,  
9 c.139 (C.58:10B-14), is presumed to be an appropriate remedial action  
10 if it is to be implemented on a site in the manner described by the  
11 department in the guidance document<sup>2</sup> and applicable regulations<sup>2</sup> and  
12 if all of the conditions for remedy selection provided for in this section  
13 are met. The burden to prove compliance with the criteria in the  
14 guidance document is with the person performing the remediation.

15 (9) [The use of the established nonresidential soil remediation  
16 standard shall not be unreasonably disapproved by the department.]  
17 (Deleted by amendment P.L. \_\_, c. \_\_)

18 The burden to demonstrate that a remedial action is protective of  
19 public health, safety and the environment, as applicable, and has been  
20 selected in conformance with the provisions of this subsection is with  
21 the person proposing the remedial action.

22 The department may require the person performing the remediation  
23 to supply the information required pursuant to this subsection as is  
24 necessary for the department to make a determination.

25 h. (1) The department shall adopt regulations which establish a  
26 procedure for a person to demonstrate that a particular parcel of land  
27 contains large quantities of historical fill material. Upon a  
28 determination by the department that large quantities of historic fill  
29 material exist on that parcel of land, there is a rebuttable presumption  
30 that the department shall not require any person to remove or treat the  
31 fill material in order to comply with [a remediation standard]  
32 applicable health risk or environmental standards. In these areas the  
33 department shall establish by regulation the requirement for  
34 engineering or institutional controls that are designed to prevent  
35 exposure of these contaminants to humans, that allow for the  
36 continued use of the property, that are less costly than removal or  
37 treatment, which maintain the health risk [levels] standards as  
38 established in subsection d. of this section, and, as applicable, are  
39 protective of the environment. The department may rebut the  
40 presumption only upon a finding by the preponderance of the evidence  
41 that the use of engineering or institutional controls would not be  
42 effective in protecting public health, safety, and the environment. The  
43 department may not adopt any rule or regulation that has the effect of  
44 shifting the burden of rebutting the presumption. For the purposes of  
45 this paragraph "historic fill material" means generally large volumes of  
46 non-indigenous material, no matter what date they were emplaced on

1 the site, used to raise the topographic elevation of a site, which were  
2 contaminated prior to emplacement and are in no way connected with  
3 the operations at the location of emplacement and which include, but  
4 are not limited to, construction debris, dredge spoils, incinerator  
5 residue, demolition debris, fly ash, and non-hazardous solid waste.  
6 Historic fill material shall not include any material which is  
7 substantially chromate chemical production waste or any other  
8 chemical production waste or waste from processing of metal or  
9 mineral ores, residues, slags or tailings.

10 (2) The department shall develop recommendations for remedial  
11 actions in large areas of historic industrial contamination. These  
12 recommendations shall be designed to meet the health risk [levels]  
13 standards established in subsection d. of this section, and to be  
14 protective of the environment and shall take into account the industrial  
15 history of these sites, the extent of the contamination that may exist,  
16 the costs of remedial actions, the economic impacts of these policies,  
17 and the anticipated uses of these properties. The department [, within  
18 one year of the enactment of this act,] shall issue a report to the  
19 Senate Environment Committee and to the Assembly [Energy and  
20 Hazardous Waste] Agriculture and Waste Management Committee, or  
21 their successors, explaining these recommendations and making any  
22 recommendations for legislative or regulatory action.

23 (3) The department may not, as a condition of allowing the use of  
24 a <sup>2</sup>[permanent]<sup>2</sup> nonresidential use soil remediation standard, or the  
25 use of institutional or engineering controls, require the owner of that  
26 real property, except as provided in section 36 of P.L.1993, c.139  
27 (C.58:10B-13), to restrict the use of that property through the filing  
28 of a deed easement, covenant, or condition.

29 i. The department may not require a remedial action workplan to  
30 be prepared or implemented or engineering or institutional controls to  
31 be imposed upon any real property unless sampling performed at that  
32 real property demonstrates the existence of contamination above the  
33 applicable remediation standards.

34 j. Upon the approval by the department of a remedial action  
35 workplan, or similar plan that describes the extent of contamination at  
36 a site and the remedial action to be implemented to address that  
37 contamination, the department may not subsequently require a change  
38 to that workplan or similar plan in order to compel a different  
39 remediation standard due to the fact that the established remediation  
40 standards have changed; however, the department may compel a  
41 different remediation standard if the difference between the new  
42 remediation standard and the remediation standard approved in the  
43 workplan or other plan differs by an order of magnitude. The  
44 limitation to the department's authority to change a workplan or  
45 similar plan pursuant to this subsection shall only apply if the workplan  
46 or similar plan is being implemented in a reasonable timeframe, as may

1 be indicated in the approved remedial action workplan or similar plan.

2 k. Notwithstanding any other provisions of this section, all  
3 remediation standards and remedial actions that involve real property  
4 located in the Pinelands area shall be consistent with the provisions of  
5 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),  
6 any rules and regulations promulgated pursuant thereto, and with  
7 section 502 of the "National Parks and Recreation Act of 1978," 16  
8 U.S.C. §[4711] 471i.

9 l. Upon the adoption of a remediation standard for a particular  
10 contaminant in soil, groundwater, or surface water pursuant to this  
11 section, the department may amend that remediation standard only  
12 upon a finding that a new standard is necessary to maintain the health  
13 risk [levels] standards established in subsection d. of section 35 of  
14 P.L.1993, c.139 (C.58:10B-12) or to protect the environment, as  
15 applicable. The department may not amend a public health based soil  
16 remediation standard to a level that would result in a health risk [level]  
17 standard more protective than that provided for in subsection d. of  
18 section 35 of P.L.1993, c.139 (C.58:10B-12).

19 m. Nothing in P.L.1993, c.139 shall be construed to restrict or in  
20 any way diminish the public participation which is otherwise provided  
21 under the provisions of the "Spill Compensation and Control Act,"  
22 P.L.1976, c.141 (C.58:10-23.11 et seq.).

23 n. Notwithstanding any provision of subsection a. of section 36 of  
24 P.L. 1993, c.139 (C.58:10B-13) to the contrary, the department may  
25 not require a person intending to implement a remedial action at an  
26 underground storage tank facility storing heating oil for on-site  
27 consumption at a one to four family residential dwelling to provide  
28 advance notice to a municipality prior to implementing that remedial  
29 action.

30 o. A person who has remediated a site pursuant to the provisions  
31 of this section, who was liable for the cleanup and removal costs of  
32 that discharge pursuant to the provisions of paragraph (1) of  
33 subsection c. of <sup>2</sup>section 8 of<sup>2</sup> P.L.1976, c.141 (C.58:10-23.11g), and  
34 who remains liable for the discharge on that site due to a possibility  
35 that a remediation standard may change, undiscovered contamination  
36 may be found, or because an engineering control was used to  
37 remediate the discharge, shall maintain with the department a current  
38 address at which that person may be contacted in the event additional  
39 remediation needs to be performed at the site. The requirement to  
40 maintain the current address shall be made part of the conditions of the  
41 no further action letter issued by the department <sup>2</sup>[at the completion  
42 of a remediation<sup>2</sup>.

43 (cf: P.L.1993, c.139, s.35)

44  
45 18. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to  
46 read as follows:

1       36. a. When real property is remediated to a nonresidential soil  
2 remediation standard or engineering or institutional controls are used  
3 in lieu of remediating a site to meet an established remediation  
4 standard for soil, groundwater, or surface water, the department shall,  
5 as a condition of the use of that standard or control measure:

6       (1) require the establishment of any engineering or institutional  
7 controls the department determines are reasonably necessary to  
8 prevent exposure to the contaminants, require maintenance, as  
9 necessary, of those controls, and require the restriction of the use of  
10 the property in a manner that prevents exposure;

11       (2) require, with the consent of the owner of the real property, the  
12 recording with the office of the county recording officer, in the county  
13 in which the property is located, a notice to inform prospective holders  
14 of an interest in the property that contamination exists on the property  
15 at a level that may statutorily restrict certain uses of or access to all or  
16 part of that property, a delineation of those restrictions, a description  
17 of all specific engineering or institutional controls at the property that  
18 exist and that shall be maintained in order to prevent exposure to  
19 contaminants remaining on the property, and the written consent to the  
20 notice by the owner of the property. The notice shall be recorded in  
21 the same manner as are deeds and other interests in real property. The  
22 department shall develop a uniform deed notice that ensures the proper  
23 filing of the deed notice. The provisions of this paragraph do not  
24 apply to restrictions on the use of surface water or groundwater;

25       (3) require a notice to the governing body of each municipality in  
26 which the property is located that contaminants will exist at the  
27 property above residential use soil remediation standards or any other  
28 remediation standards and specifying the restrictions on the use of or  
29 access to all or part of that property and of the specific engineering or  
30 institutional controls at the property that exist and that shall be  
31 maintained;

32       (4) require, when determined necessary by the department, that  
33 signs be posted at any location at the site where access is restricted or  
34 in those areas that must be maintained in a prescribed manner, to  
35 inform persons on the property that there are restrictions on the use of  
36 that property or restrictions on access to any part of the site;

37       (5) require that a list of the restrictions be kept on site for  
38 inspection by governmental enforcement officials; and

39       (6) require a person, prior to commencing a remedial action, to  
40 notify the governing body of each municipality wherein the property  
41 being remediated is located. The notice shall include, but not be  
42 limited to, the commencement date for the remedial action; the name,  
43 mailing address and business telephone number of the person  
44 implementing the remedial action, or his designated representative; and  
45 a brief description of the remedial action.

46       b. If the owner of the real property does not consent to the

1 recording of a notice pursuant to paragraph (2) of subsection a. of this  
2 section, the department shall require the use of a residential soil  
3 remediation standard in the remediation of that real property.

4 c. Whenever engineering or institutional controls on property as  
5 provided in subsection a. of this section are no longer required, or  
6 whenever the engineering or institutional controls are changed because  
7 of the performance of subsequent remedial activities, a change in  
8 conditions at the site, or the adoption of revised remediation  
9 standards, the department shall require that the owner or operator of  
10 that property record with the office of the county recording officer a  
11 notice that the use of the property is no longer restricted or delineating  
12 the new restrictions. The department shall also require that the owner  
13 or operator notify, in writing, the municipality in which the property  
14 is located of the removal or change of the restrictive use conditions.

15 d. The owner or lessee of any real property, or any person  
16 operating a business on real property, which has been remediated to  
17 a nonresidential use soil remediation standard or on which the  
18 department has allowed engineering or institutional controls for soil,  
19 groundwater, or surface water to protect the public health, safety, or  
20 the environment, as applicable, shall maintain the engineering or  
21 institutional controls as required by the department. An owner, lessee,  
22 or operator who takes any action that results in the improper alteration  
23 or removal of engineering or institutional controls or who fails to  
24 maintain the engineering or institutional controls as required by the  
25 department, shall be subject to the penalties and actions set forth in  
26 section 22 of P.L.1976, c.141 (C.58:10-23.11u) and, where applicable,  
27 shall be liable for any additional remediation and damages pursuant to  
28 the provisions of section 8 of P.L.1976, c.141 (C.58:10-23.11g). The  
29 provisions of this subsection shall not apply if a notification received  
30 pursuant to subsection b. of this section authorizes all restrictions or  
31 controls to be removed from the subject property.

32 e. Notwithstanding the provisions of any other law, or any rule,  
33 regulation, or order adopted pursuant thereto to the contrary,  
34 whenever contamination at a property is remediated in compliance  
35 with any soil, or any groundwater [,] or surface water remediation  
36 standards that were in effect or approved by the department at the  
37 completion of the remediation, [the owner or operator of the property  
38 or person performing the remediation] no person, except as otherwise  
39 provided in this section, shall [not] be liable for the cost of any  
40 additional remediation that may be required by a subsequent adoption  
41 by the department of a more stringent remediation standard for a  
42 particular contaminant. Upon the adoption of a regulation that amends  
43 a remediation standard, <sup>2</sup>or where the adoption of a regulation would  
44 change a remediation standard which was otherwise approved by the  
45 department.<sup>2</sup> only a person who is liable to clean up and remove that  
46 contamination pursuant to section 8 of P.L.1976, c.141

1 (C.58:10-23.11g), and who does not have a defense to liability  
2 pursuant to subsection d. of that section, shall be liable for any  
3 additional remediation costs necessary to bring the site into  
4 compliance with the new remediation standards except that no person  
5 shall be so liable unless the difference between the new remediation  
6 standard and the level or concentration of a contaminant at the  
7 property differs by an order of magnitude <sup>2, 2</sup>. The department may  
8 compel a person who is liable for the additional remediation costs to  
9 perform additional remediation activities to meet the new remediation  
10 standard except that a person may not be compelled to perform any  
11 additional remediation activities on the site if that person can  
12 demonstrate that the existing engineering or institutional controls on  
13 the site prevent exposure to the contamination and that the site  
14 remains protective of public health <sup>2, 2</sup> safety and the environment  
15 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden  
16 to prove that a site remains protective is on the person liable for the  
17 additional remediation costs. A person liable for the additional  
18 remediation costs who is relying on engineering or institutional  
19 controls to make a site protective, shall comply with the provisions of  
20 subsections a., b., c. and d. of this section.

21 Nothing in the provisions of this subsection shall be construed to  
22 affect the authority of the department, pursuant to subsection f. of this  
23 section, to require additional remediation on real property where  
24 engineering <sup>2</sup>[or institutional]<sup>2</sup> controls were implemented.

25 Nothing in the provisions of this subsection shall limit the rights of  
26 a person, other than the State, or any department or agency thereof,  
27 to bring a civil action for damages, contribution, or indemnification as  
28 provided by statutory or common law.

29 f. Whenever the department approves or has approved the use of  
30 engineering <sup>2</sup>[or institutional]<sup>2</sup> controls for the remediation of soil,  
31 <sup>2</sup>[or the use of engineering or institutional controls for the remediation  
32 of]<sup>2</sup> groundwater[,]<sup>2, 2</sup> or surface water, to protect public health,  
33 safety or the environment <sup>2</sup>[in lieu of remediating a site to a condition  
34 that meets an established residential or non residential soil or other  
35 remediation standard]<sup>2</sup>, the department [shall not] may require  
36 additional remediation of that site [unless] only if the engineering <sup>2</sup>[or  
37 institutional]<sup>2</sup> controls no longer are protective of public health, safety,  
38 or the environment.

39 g. Whenever the department approves or has approved the use of  
40 engineering or institutional controls for the remediation of soil,  
41 groundwater, or surface water, to protect public health, safety or the  
42 environment, the department shall inspect that site at least once every  
43 five years in order to ensure that the engineering and institutional  
44 controls are being properly maintained and that the controls remain  
45 <sup>2</sup>[protection] protective<sup>2</sup> of public health and safety and of the  
46 environment.

1        h. A property owner of a site on which a deed notice has been  
2 recorded shall notify any person who intends to excavate on the site  
3 of the nature and location of any contamination existing on the site and  
4 of any conditions or measures necessary to prevent exposure to  
5 contaminants.

6 (cf: P.L.1993, c.139, s.36)

7  
8        19. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to  
9 read as follows:

10        3. Unless the context clearly indicates otherwise, the following  
11 terms shall have the following meanings:

12        "Act of God" means an act exclusively occasioned by an  
13 unanticipated, grave natural disaster without the interference of any  
14 human agency;

15        "Administrator" means the chief executive of the New Jersey Spill  
16 Compensation Fund;

17        "Barrel" means 42 United States gallons or 159.09 liters or an  
18 appropriate equivalent measure set by the director for hazardous  
19 substances which are other than fluid or which are not commonly  
20 measured by the barrel;

21        "Board" means a board of arbitration convened by the  
22 administrator to settle disputed disbursements from the fund;

23        "Cleanup and removal costs" means all costs associated with a  
24 discharge, incurred by the State or its political subdivisions or their  
25 agents or any person with written approval from the department in the:

26 (1) removal or attempted removal of hazardous substances, or (2)  
27 taking of reasonable measures to prevent or mitigate damage to the  
28 public health, safety, or welfare, including, but not limited to, public  
29 and private property, shorelines, beaches, surface waters, water  
30 columns and bottom sediments, soils and other affected property,  
31 including wildlife and other natural resources, and shall include costs  
32 incurred by the State for the indemnification and legal defense of  
33 contractors pursuant to sections 1 through 11 of P.L.1991, c.373  
34 (C.58:10-23.11f8 et seq.) For the purposes of this definition, costs  
35 incurred by the State shall not include any indirect costs for  
36 department oversight performed after the effective date of P.L. \_\_\_\_ ,  
37 c. (now before the Legislature as this bill), but may include only  
38 those program costs directly related to the cleanup and removal of the  
39 discharge; however, where the State or the fund have expended money  
40 for the cleanup and removal of a discharge and are seeking to recover  
41 the costs incurred in that cleanup and removal action from a  
42 responsible party, costs incurred by the State shall include any indirect  
43 costs;

44        "Commissioner" means the Commissioner of Environmental  
45 Protection;

46        "Department" means the Department of Environmental Protection;

1 "Director" means the Director of the Division of Taxation in the  
2 Department of the Treasury;

3 "Discharge" means any intentional or unintentional action or  
4 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
5 emitting, emptying or dumping of hazardous substances into the  
6 waters or onto the lands of the State, or into waters outside the  
7 jurisdiction of the State when damage may result to the lands, waters  
8 or natural resources within the jurisdiction of the State;

9 "Emergency response action" means those activities conducted by  
10 a local unit to clean up, remove, prevent, contain, or mitigate a  
11 discharge that poses an immediate threat to the environment or to the  
12 public health, safety, or welfare;

13 "Fair market value" means the invoice price of the hazardous  
14 substances transferred, including transportation charges; but where no  
15 price is so fixed, "fair market value" shall mean the market price as of  
16 the close of the nearest day to the transfer, paid for similar hazardous  
17 substances, as shall be determined by the taxpayer pursuant to rules of  
18 the director;

19 "Fund" means the New Jersey Spill Compensation Fund;

20 "Hazardous substances" means the "environmental hazardous  
21 substances" on the environmental hazardous substance list adopted by  
22 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);  
23 such elements and compounds, including petroleum products, which  
24 are defined as such by the department, after public hearing, and which  
25 shall be consistent to the maximum extent possible with, and which  
26 shall include, the list of hazardous substances adopted by the federal  
27 Environmental Protection Agency pursuant to section 311 of the  
28 federal Water Pollution Control Act Amendments of 1972,  
29 Pub.L.92-500, as amended by the Clean Water Act of 1977,  
30 Pub.L.95-217 (33 U.S.C. §1251 et seq.); the list of toxic pollutants  
31 designated by Congress or the EPA pursuant to section 307 of that  
32 act; and the list of hazardous substances adopted by the federal  
33 Environmental Protection Agency pursuant to section 101 of the  
34 "Comprehensive Environmental Response, Compensation and Liability  
35 Act of 1980," Pub.L.96-510 (42 U.S.C. §9601 et seq.); provided,  
36 however, that sewage and sewage sludge shall not be considered as  
37 hazardous substances for the purposes of P.L.1976, c.141  
38 (C.58:10-23.11 et seq.);

39 "Local unit" means any county or municipality, or any agency or  
40 other instrumentality thereof, or a duly incorporated volunteer fire,  
41 ambulance, first aid, emergency, or rescue company or squad.

42 "Major facility" includes, but is not limited to, any refinery, storage  
43 or transfer terminal, pipeline, deep-water port, drilling platform or any  
44 appurtenance related to any of the preceding that is used or is capable  
45 of being used to refine, produce, store, handle, transfer, process or  
46 transport hazardous substances. "Major facility" shall include a vessel

1 only when that vessel is engaged in a transfer of hazardous substances  
2 between it and another vessel, and in any event shall not include a  
3 vessel used solely for activities directly related to recovering,  
4 containing, cleaning up or removing discharges of petroleum in the  
5 surface waters of the State, including training, research, and other  
6 activities directly related to spill response.

7 A facility shall not be considered a major facility for the purpose  
8 of P.L.1976, c.141 unless it has total combined aboveground or buried  
9 storage capacity of:

10 (1) 20,000 gallons or more for hazardous substances which are  
11 other than petroleum or petroleum products, or

12 (2) 200,000 gallons or more for hazardous substances of all kinds.

13 In determining whether a facility is a major facility for the purposes  
14 of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage  
15 tank at the facility used solely to store heating oil for on-site  
16 consumption shall not be considered when determining the combined  
17 storage capacity of the facility.

18 For the purposes of this definition, "storage capacity" shall mean  
19 only that total combined capacity which is dedicated to, used for or  
20 intended to be used for storage of hazardous substances of all kinds.  
21 Where appropriate to the nature of the facility, storage capacity may  
22 be determined by the intended or actual use of open land or  
23 unenclosed space as well as by the capacities of tanks or other  
24 enclosed storage spaces;

25 "Natural resources" means all land, fish, shellfish, wildlife, biota,  
26 air, waters and other such resources owned, managed, held in trust or  
27 otherwise controlled by the State;

28 "Owner" or "operator" means, with respect to a vessel, any person  
29 owning, operating or chartering by demise such vessel; with respect to  
30 any major facility, any person owning such facility, or operating it by  
31 lease, contract or other form of agreement; with respect to abandoned  
32 or derelict major facilities, the person who owned or operated such  
33 facility immediately prior to such abandonment, or the owner at the  
34 time of discharge;

35 "Person" means public or private corporations, companies,  
36 associations, societies, firms, partnerships, joint stock companies,  
37 individuals, the United States, the State of New Jersey and any of its  
38 political subdivisions or agents;

39 "Petroleum" or "petroleum products" means oil or petroleum of  
40 any kind and in any form, including, but not limited to, oil, petroleum,  
41 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other  
42 wastes, crude oils, and substances or additives to be utilized in the  
43 refining or blending of crude petroleum or petroleum stock in this  
44 State; however, any compound designated by specific chemical name  
45 on the list of hazardous substances adopted by the department  
46 pursuant to this section shall not be considered petroleum or a

1 petroleum product for the purposes of P.L.1976, c.141, unless such  
2 compound is to be utilized in the refining or blending of crude  
3 petroleum or petroleum stock in this State;

4 "Taxpayer" means the owner or operator of a major facility subject  
5 to the tax provisions of P.L.1976, c.141;

6 "Tax period" means every calendar month on the basis of which the  
7 taxpayer is required to report under P.L.1976, c.141;

8 "Transfer" means onloading or offloading between major facilities  
9 and vessels, or vessels and major facilities, and from vessel to vessel  
10 or major facility to major facility, except for fueling or refueling  
11 operations and except that with regard to the movement of hazardous  
12 substances other than petroleum, it shall also include any onloading of  
13 or offloading from a major facility;

14 "Vessel" means every description of watercraft or other  
15 contrivance that is practically capable of being used as a means of  
16 commercial transportation of hazardous substances upon the water,  
17 whether or not self-propelled;

18 "Waters" means the ocean and its estuaries to the seaward limit of  
19 the State's jurisdiction, all springs, streams and bodies of surface or  
20 groundwater, whether natural or artificial, within the boundaries of  
21 this State.

22 (cf: P.L.1995, c.16, s.1)

23  
24 20. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to  
25 read as follows:

26 8. a. The fund shall be strictly liable, without regard to fault, for  
27 all cleanup and removal costs and for all direct and indirect damages  
28 no matter by whom sustained, including but not limited to:

29 (1) The cost of restoring, repairing, or replacing any real or  
30 personal property damaged or destroyed by a discharge, any income  
31 lost from the time such property is damaged to the time such property  
32 is restored, repaired or replaced, and any reduction in value of such  
33 property caused by such discharge by comparison with its value prior  
34 thereto;

35 (2) The cost of restoration and replacement, where possible, of  
36 any natural resource damaged or destroyed by a discharge;

37 (3) Loss of income or impairment of earning capacity due to  
38 damage to real or personal property, including natural resources  
39 destroyed or damaged by a discharge; provided that such loss or  
40 impairment exceeds 10% of the amount which claimant derives, based  
41 upon income or business records, exclusive of other sources of  
42 income, from activities related to the particular real or personal  
43 property or natural resources damaged or destroyed by such discharge  
44 during the week, month or year for which the claim is filed;

45 (4) Loss of tax revenue by the State or local governments for a  
46 period of one year due to damage to real or personal property

1 proximately resulting from a discharge;

2 (5) Interest on loans obtained or other obligations incurred by a  
3 claimant for the purpose of ameliorating the adverse effects of a  
4 discharge pending the payment of a claim in full as provided by this  
5 act.

6 b. The damages which may be recovered by the fund, without  
7 regard to fault, subject to the defenses enumerated in subsection d. of  
8 this section against the owner or operator of a major facility or vessel,  
9 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per  
10 gross ton for each vessel, except that such maximum limitation shall  
11 not apply and the owner or operator shall be liable, jointly and  
12 severally, for the full amount of such damages if it can be shown that  
13 such discharge was the result of (1) gross negligence or willful  
14 misconduct, within the knowledge and privity of the owner, operator  
15 or person in charge, or (2) a gross or willful violation of applicable  
16 safety, construction or operating standards or regulations. Damages  
17 which may be recovered from, or by, any other person shall be limited  
18 to those authorized by common or statutory law.

19 c. (1) Any person who has discharged a hazardous substance, or  
20 is in any way responsible for any hazardous substance, shall be strictly  
21 liable, jointly and severally, without regard to fault, for all cleanup and  
22 removal costs no matter by whom incurred. Such person shall also be  
23 strictly liable, jointly and severally, without regard to fault, for all  
24 cleanup and removal costs incurred by the department or a local unit  
25 pursuant to subsection b. of section 7 of P.L.1976, c.141  
26 (C.58:10-23.11f).

27 (2) In addition to the persons liable pursuant to [paragraph (1) of]  
28 this subsection, in the case of a discharge of a hazardous substance  
29 from a vessel into the waters of the State, the owner or operator of a  
30 refinery, storage, transfer, or pipeline facility to which the vessel was  
31 en route to deliver the hazardous substance who, by contract,  
32 agreement, or otherwise, was scheduled to assume ownership of the  
33 discharged hazardous substance, and any other person who was so  
34 scheduled to assume ownership of the discharged hazardous substance,  
35 shall be strictly liable, jointly and severally, without regard to fault, for  
36 all cleanup and removal costs if the owner or operator of the vessel did  
37 not have the evidence of financial responsibility required pursuant to  
38 section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

39 Where a person is liable for cleanup and removal costs as provided  
40 in this paragraph, any expenditures made by the administrator for that  
41 cleanup and removal shall constitute a debt of that person to the fund.  
42 The debt shall constitute a lien on all property owned by that person  
43 when a notice of lien identifying the nature of the discharge and the  
44 amount of the cleanup, removal and related costs expended from the  
45 fund is duly filed with the clerk of the Superior Court. The clerk shall  
46 promptly enter upon the civil judgment or order docket the name and

1 address of the liable person and the amount of the lien as set forth in  
2 the notice of lien. Upon entry by the clerk, the lien, to the amount  
3 committed by the administrator for cleanup and removal, shall attach  
4 to the revenues and all real and personal property of the liable person,  
5 whether or not that person is insolvent.

6 For the purpose of determining priority of this lien over all other  
7 claims or liens which are or have been filed against the property of an  
8 owner or operator of a refinery, storage, transfer, or pipeline facility,  
9 the lien on the facility to which the discharged hazardous substance  
10 was en route shall have priority over all other claims or liens which are  
11 or have been filed against the property. The notice of lien filed  
12 pursuant to this paragraph which affects any property of a person  
13 liable pursuant to this paragraph other than the property of an owner  
14 or operator of a refinery, storage, transfer, or pipeline facility to which  
15 the discharged hazardous substance was en route, shall have priority  
16 from the day of the filing of the notice of the lien over all claims and  
17 liens filed against the property, but shall not affect any valid lien, right,  
18 or interest in the property filed in accordance with established  
19 procedure prior to the filing of a notice of lien pursuant to this  
20 paragraph.

21 To the extent that a person liable pursuant to this paragraph is not  
22 otherwise liable pursuant to paragraph (1) of this subsection, or under  
23 any other provision of law or under common law, that person may  
24 bring an action for indemnification for costs paid pursuant to this  
25 paragraph against any other person who is strictly liable pursuant to  
26 paragraph (1) of this subsection.

27 Nothing in this paragraph shall be construed to extend or negate  
28 the right of any person to bring an action for contribution that may  
29 exist under P.L.1976, c.141, or any other act or under common law.

30 (3) In addition to the persons liable pursuant to this subsection,  
31 any person who owns real property acquired on or after September 14,  
32 1993 on which there has been a discharge prior to the person's  
33 acquisition of that property and who knew or should have known that  
34 a hazardous substance had been discharged at the real property, shall  
35 be strictly liable, jointly and severally, without regard to fault, for all  
36 cleanup and removal costs no matter by whom incurred. Such person  
37 shall also be strictly liable, jointly and severally, without regard to  
38 fault, for all cleanup and removal costs incurred by the department or  
39 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
40 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
41 liability of any person who acquired real property prior to September  
42 14, 1993.

43 d. (1) In addition to those defenses provided in this subsection, an  
44 act or omission caused solely by war, sabotage, or God, or a  
45 combination thereof, shall be the only defenses which may be raised by  
46 any owner or operator of a major facility or vessel responsible for a

1 discharge in any action arising under the provisions of this act.

2 (2) A person, including an owner or operator of a major facility,  
 3 who owns real property acquired on or after [the effective date of  
 4 P.L.1993, c.139 (C.13:1K-9.6 et al.),] September 14, 1993 on which  
 5 there has been a discharge, shall not be [considered a person in any  
 6 way responsible] liable <sup>2</sup>for cleanup and removal costs or for any other  
 7 damages <sup>2</sup> to the State or to any other person for the discharged  
 8 hazardous substance pursuant to subsection c. of this section or  
 9 pursuant to civil common law, [unless] if that person can establish by  
 10 a preponderance of the evidence that <sup>2</sup>[all of the  
 11 following]subparagraphs (a) through (d) apply, or if applicable,  
 12 subparagraphs (a) through (e)<sup>2</sup> apply:

13 (a) the person acquired the real property after the discharge of  
 14 that hazardous substance at the real property;

15 (b) (i) at the time the person acquired the real property, the person  
 16 did not know and had no reason to know that any hazardous substance  
 17 had been discharged at the real property, or (ii) the person acquired  
 18 the real property by devise or succession, except that any other funds  
 19 or property received by that person from the deceased real property  
 20 owner who discharged a hazardous substance or was in any way  
 21 responsible for a hazardous substance, shall be made available to  
 22 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
 23 complies with the provisions of subparagraph (e) of paragraph (2) of  
 24 this subsection;

25 (c) the person did not discharge the hazardous substance <sup>2</sup>[and],<sup>2</sup>  
 26 is not in any way responsible for the hazardous substance <sup>2</sup>, and is not  
 27 a corporate successor to the discharger or to any person in any way  
 28 responsible for the hazardous substance or to anyone liable for cleanup  
 29 and removal costs pursuant to this section<sup>2</sup>; and

30 (d) the person gave notice of the discharge to the department  
 31 upon actual discovery of that discharge.

32 To establish that a person had no reason to know that any  
 33 hazardous substance had been discharged for the purposes of this  
 34 paragraph (2), the person must have undertaken, at the time of  
 35 acquisition, all appropriate inquiry into the previous ownership and  
 36 uses of the property. For the purposes of this paragraph (2), all  
 37 appropriate inquiry shall mean the performance of a preliminary  
 38 assessment, and site investigation [(   if the preliminary assessment  
 39 indicates that a site investigation is necessary   )], as defined in section  
 40 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
 41 with rules and regulations promulgated by the department defining  
 42 these terms.

43 Nothing in this paragraph (2) shall be construed to alter liability of  
 44 any person who acquired real property prior to [the effective date of  
 45 P.L.1993, c.139 (C.13:1K-9.6 et al.)] September 14, 1993.

46 (e) For the purposes of this subparagraph the person must have (i)

1 acquired the property subsequent to a <sup>2</sup>[contaminant] hazardous  
2 substance<sup>2</sup> being discharged on the site and which discharge was  
3 discovered at the time of acquisition as a result of the appropriate  
4 inquiry, as defined in this paragraph (2), (ii) performed, following the  
5 effective date of P.L. , c. (now before the legislature as this bill),  
6 a remediation of the site or discharge consistent with the provisions of  
7 section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied upon a <sup>2</sup>valid<sup>2</sup>  
8 no further action letter <sup>2</sup>from the department for a remediation  
9 performed prior to acquisition, or obtained approval of a remedial  
10 action workplan by the department after the effective date of P.L. ,  
11 c. (before the Legislature as this bill) and continued to comply with  
12 the conditions of that workplan,<sup>2</sup> and (iii) established <sup>2</sup>[or] and<sup>2</sup>  
13 maintained all engineering and institutional controls as may be required  
14 pursuant sections 35 and 36 of P.L.1993, c.139. A person who  
15 complies with the provisions of this subparagraph by actually  
16 performing a remediation of the site or discharge as set forth in (ii)  
17 above shall <sup>2</sup>be issued<sup>2</sup>, upon application, <sup>2</sup>[be issued]<sup>2</sup> a no further  
18 action letter by the department. A person who complies with the  
19 provisions of this subparagraph either by receipt of a no further action  
20 letter from the department following the effective date of P.L. , c.  
21 (before the Legislature as this bill), or by relying on a previously  
22 issued no further action letter shall not be liable for any further  
23 remediation including any changes in a remediation standard or for the  
24 subsequent discovery of a <sup>2</sup>[contaminant] hazardous substance,<sup>2</sup> at the  
25 site, if the remediation was for the entire site, and the <sup>2</sup>[contaminent]  
26 hazardous substance<sup>2</sup> was discharged prior to the person acquiring the  
27 property. Notwithstanding any other provisions of this subparagraph,  
28 a person who complies with the provisions of this subparagraph only  
29 by virtue of the existence of a previously issued no further action letter  
30 shall receive no liability protections for any discharge which occurred  
31 during the time period between the issuance of the no further action  
32 letter and the property acquisition. Compliance with the provisions of  
33 this subparagraph (e) shall not relieve any person of any liability for a  
34 discharge that is off the site of the property covered by the no further  
35 action letter, for a discharge that occurs at that property after the  
36 person acquires the property, for any actions that person negligently  
37 takes that aggravates or contributes to a discharge of a  
38 <sup>2</sup>[contaminent] hazardous substance, for failure to comply in the future  
39 with laws and regulations<sup>2</sup> , or if that person fails to maintain the  
40 institutional or engineering controls on the property or to otherwise  
41 comply with the provisions of the no further action letter.

42 (3) Notwithstanding the provisions of paragraph (2) of this  
43 subsection to the contrary, if a person who owns real property obtains  
44 actual knowledge of a discharge of a hazardous substance at the real  
45 property during the period of that person's ownership and  
46 subsequently transfers ownership of the property to another person

1 without disclosing that knowledge, the transferor shall be strictly liable  
 2 for the cleanup and removal costs of the discharge and no defense  
 3 under this subsection shall be available to that person.

4 (4) Any federal, State, or local governmental entity which acquires  
 5 ownership of real property through bankruptcy, tax delinquency,  
 6 abandonment, escheat, eminent domain, condemnation or any  
 7 circumstance in which the [government] governmental entity  
 8 involuntarily acquires title by virtue of its function as sovereign, or  
 9 where the governmental entity acquires the property by any means for  
 10 the purpose of promoting the redevelopment of that property, shall not  
 11 be liable [for the cleanup and removal costs of], pursuant to  
 12 subsection c. of this section or pursuant to common law, to the State  
 13 or to any other person for any discharge which occurred or began  
 14 prior to that ownership. This paragraph shall not <sup>2</sup>[apply]provide any  
 15 liability protection<sup>2</sup> to any federal, State or local governmental entity  
 16 which has caused or contributed to the discharge of a hazardous  
 17 substance. <sup>2</sup>This paragraph shall not provide any liability protection  
 18 to any federal, State, or local government entity that acquires  
 19 ownership of real property by condemnation or eminent domain where  
 20 the real property is being remediated in a timely manner at the time of  
 21 the condemnation or eminent domain action.<sup>2</sup>

22 e. [(1) If the Department of Environmental Protection issues a no  
 23 further action letter or approves a remedial action workplan after the  
 24 effective date of P.L.1996, c.62 (C.55:19-20 et al.) for a site at which  
 25 a discharge occurred prior to or after the effective date of P.L.1996,  
 26 c.62 (C.55:19-20 et al.), then any person who is not otherwise liable  
 27 for any discharge at the site which occurred prior to the department's  
 28 approval of the no further action letter or remedial action workplan  
 29 shall not be liable for the discharge based solely on that person  
 30 becoming an owner or operator of the site of the discharge after the  
 31 discharge has occurred. For the purposes of this paragraph, a site  
 32 shall constitute the real property defined in the remedial action  
 33 workplan or, if no remedial action workplan is required, the no further  
 34 action letter. The provisions of this paragraph shall only apply when  
 35 the site is located in a qualified municipality as defined pursuant to  
 36 section 3 of P.L.1996, c.62 (C.55:19-22) and there is continued  
 37 compliance with all of the conditions of the no further action letter, the  
 38 remedial action workplan and all applicable engineering and  
 39 institutional controls.

40 (2)] <sup>2</sup>[The] Neither the<sup>2</sup> fund <sup>2</sup>[established pursuant to the "Spill  
 41 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et  
 42 seq.),] nor the Sanitary Landfill Contingency Fund established pursuant  
 43 to P.L. 1981, c.306 (C.13:1E-100 et seq)<sup>2</sup> shall <sup>2</sup>[not]<sup>2</sup> be liable for  
 44 any damages incurred by any person who is relieved from liability  
 45 pursuant to [this] subsection d. or f. of this section <sup>2</sup>for a remediation  
 46 that involves the use of engineering controls but the fund and the

1 Sanitary Landfill Contingency Fund shall be liable for any remediation  
2 that involves only the use of institutional controls if after a valid no  
3 further action letter has been issued the department orders additional  
4 remediation except that the fund and the Sanitary Landfill Contingency  
5 Fund shall not be liable for any additional remediation that is required  
6 to remove an institutional control<sup>2</sup>.

7 <sup>2</sup>f. Notwithstanding any other provision of this section, a person,  
8 who owns real property acquired on or after the effective date of  
9 P.L. , c. (C. ) (before the Legislature as this bill), shall not be  
10 liable for any cleanup and removal costs or damages, under this section  
11 or pursuant to any other statutory or civil common law, to any person,  
12 other than the State and the federal government, harmed by any  
13 hazardous substance discharged on that property prior to acquisition,  
14 and any migration off that property related to that discharge, provided  
15 all the conditions of this subsection are met:

16 (1) the person acquired the real property after the discharge of  
17 that hazardous substance at the real property;

18 (2) the person did not discharge the hazardous substance, is not in  
19 any way responsible for the hazardous substance, and is not a  
20 corporate successor to the discharger or to any person in any way  
21 responsible for the hazardous substance or to anyone liable for a  
22 discharge pursuant to this section;

23 (3) the person gave notice of the discharge to the department upon  
24 actual discovery of that discharge;

25 (4) within 30 days after acquisition of the property, the person  
26 commenced a remediation of the discharge, including any migration,  
27 pursuant to a department oversight document executed prior to  
28 acquisition, and the department is satisfied that remediation was  
29 completed in a timely and appropriate fashion; and

30 (5) Within ten days after acquisition of the property, the person  
31 agrees in writing to provide access to the State for remediation and  
32 related activities, as determined by the State.

33 The provisions of this subsection shall not relieve any person of  
34 any liability:

35 (1) for a discharge that occurs at that property after the person  
36 acquired the property;

37 (2) for any actions that person negligently takes that aggravates or  
38 contributes to the harm inflicted upon any person;

39 (3) if that person fails to maintain the institutional or engineering  
40 controls on the property or to otherwise comply with the provisions  
41 of a no further action letter or a remedial action workplan and a  
42 person is harmed thereby;

43 (4) for any liability to clean up and remove, pursuant to the  
44 department's regulations and directions, any hazardous substances that  
45 may have been discharged on the property or that may have migrated  
46 therefrom; and

1       (5) for that person's failure to comply in the future with laws and  
2 regulations.

3       g. Nothing in the amendatory provisions to this section adopted  
4 pursuant to P.L.     , c.     (before the Legislature as this bill) shall be  
5 construed to remove any defense to liability that a person may have  
6 had pursuant to subsection e. of this section that existed prior to the  
7 effective date of P.L.     , c.     (before the Legislature as this bill).

8       h. Nothing in this section shall limit the requirements of any  
9 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).<sup>2</sup>

10 (cf: P.L.1996, c.62, s.56)

11  
12       21. Section 2 of P.L.1995, c.413 (C.54:4-3.151) is amended to  
13 read as follows:

14       2. The Legislature finds that there are numerous properties that  
15 are underutilized or that have been abandoned and that are not being  
16 utilized for any commercial use because of contamination that exists  
17 at those properties; that abandoned contaminated properties harm  
18 society by causing a burden on municipal services while failing to  
19 contribute to the funding of those services; that a disproportionate  
20 percentage of these properties are located in older urban municipalities  
21 given the fact that these municipalities were once the center for  
22 industrial production; that the revitalization of these properties will not  
23 only bring tax ratables to the municipality and other local  
24 governments, but will result in job creation and foster urban  
25 redevelopment; that one of the central tenets of the State Development  
26 and Redevelopment Plan is to redevelop urban areas with existing  
27 utilities and infrastructure and that the use of these now abandoned or  
28 underutilized sites for commercial purposes will make a significant  
29 contribution toward implementing the plan; that the federal "Clean Air  
30 Act" encourages the reindustrialization of urban areas as this would  
31 provide jobs near where people live thus reducing harmful air  
32 pollutants emitted from automobiles needed to travel distances to  
33 places of employment; and that it is in the economic interest of the  
34 State and the municipalities in which abandoned or underutilized  
35 contaminated properties are located to encourage the remediation of  
36 these properties so that they can be reused or fully used for  
37 commercial, residential, or other productive purposes.

38 (cf: P.L.1995, c.413, s.2)

39  
40       22. Section 3 of P.L.1995, c.413, (C.54:4-3.152) is amended to  
41 read as follows:

42       3. As used in this act:

43       "Assessor" means the municipal tax assessor appointed pursuant  
44 to the provisions of chapter 9 of Title 40A of the New Jersey Statutes;

45       "Contamination" or "contaminant" means any discharged  
46 hazardous substance as defined pursuant to section 3 of P.L.1976,

c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

"Environmental opportunity zone" means any qualified real property that has been designated by the governing body as an environmental opportunity zone pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153);

<sup>2</sup>"Permanent remedial action" means any remedial action that does not require the continued use of engineering controls in order to meet the established health risk or environmental standards. A remedial action may be considered permanent even if institutional controls are employed at the site.;

"Limited restricted use remedial action" means any remedial action that requires the continued use of institutional controls but does not require the use of an engineering control.<sup>2</sup>

"Qualified real property" means any parcel of real property that is now vacant or underutilized, which is in need of a remediation due to a discharge or threatened discharge of a contaminant [, and which is listed in the most recent Department of Environmental Protection publication of known hazardous discharge sites in New Jersey prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.)];

"Remediation" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action <sup>2</sup>[.] ;

"Remediation cost" means cost associated with the implementation of a remediation, including all direct and indirect legal, administrative and capital costs, engineering costs, and annual operation, maintenance, and monitoring costs;

"Unrestricted use remedial action" means any remedial action that does not require the continued use of engineering or institutional controls in order to meet the established health risk or environmental standards.<sup>2</sup>

(cf: P.L.1995, c.413, s.3)

23. Section 5 of P.L.1995, c.413 (C.54:4-3.154) is amended to read as follows:

5. The governing body of a municipality which has adopted an ordinance pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153), <sup>1</sup>[may] shall<sup>1</sup>, by ordinance, provide for exemptions of real property taxes for environmental opportunity zones. The governing body shall include the following items in its enabling ordinance:

a. A property tax exemption term of ten years except that a tax exemption may be extended up to fifteen years, at the municipality's option, if the qualified real property is to be remediated with a<sup>2</sup>[permanent] limited restricted use remedial action or an unrestricted

1 use<sup>2</sup> remedial action<sup>2</sup>. The property tax exemption shall end if the  
2 difference between the real property taxes otherwise due and payments  
3 made in lieu of those taxes equals the total remediation cost for the  
4 qualified real property<sup>2</sup>;

5 b. The application procedure for an exemption authorized under  
6 P.L.1995, c.413 (C.54:4-3.150 et seq.);

7 c. The method of computing payments in lieu of real property  
8 taxes pursuant to subsection b. of section 7 of P.L.1995, c.413  
9 (C.54:4-3.156);

10 d. An approval method for exemption applications by the assessor  
11 or by ordinance on a per application basis; and

12 e. A requirement that the environmental opportunity zone will be  
13 remediated in compliance with the remediation [standards] regulations  
14 adopted by the Department of Environmental Protection pursuant to  
15 P.L.1993, c.139 (C.58:10B-1 et al.), that the owner of the property  
16 will enter into a memorandum of agreement or administrative consent  
17 order with the department to perform the remediation and will  
18 complete the remediation pursuant to the agreement or order, and that,  
19 once remediated, the environmental opportunity zone will be used for  
20 a commercial [or] , industrial, residential, or other productive purpose  
21 during the time period for which the real property tax exemption is  
22 given.

23 (cf: P.L.1995, c.413, s.5)

24  
25 24. Section 7 of P.L. 1995, c.413 (C.54:4-3.156) is amended to  
26 read as follows:

27 7. a. Each approved exemption shall be evidenced by a financial  
28 agreement between the municipality and the applicant. The agreement  
29 shall be prepared by the applicant and shall contain the representations  
30 that are required by the enabling ordinance. The agreement shall  
31 provide for the applicant to annually pay to the municipality an amount  
32 in lieu of real property taxes, to be computed according to subsection  
33 b. of this section. With the approval of the governing body, the  
34 agreement may be assigned to a subsequent owner of the  
35 environmental opportunity zone.

36 b. Payments in lieu of real property taxes may be computed as a  
37 portion of the real property taxes otherwise due, according to the  
38 following schedule:

39 (1) In the first tax year following execution of a memorandum of  
40 agreement or administrative consent order, no payment in lieu of taxes  
41 otherwise due;

42 (2) In the second tax year following execution of a memorandum  
43 of agreement or administrative consent order, an amount not less than  
44 10% of taxes otherwise due;

45 (3) In the third tax year following execution of a memorandum of  
46 agreement or administrative consent order, an amount not less than

1 20% of taxes otherwise due;

2 (4) In the fourth tax year following execution of a memorandum of  
3 agreement or administrative consent order, an amount not less than  
4 30% of taxes otherwise due;

5 (5) In the fifth tax year following execution of a memorandum of  
6 agreement or administrative consent order, an amount not less than  
7 40% of taxes otherwise due;

8 (6) In the sixth tax year following execution of a memorandum of  
9 agreement or administrative consent order, an amount not less than  
10 50% of the taxes otherwise due;

11 (7) In the seventh tax year following execution of a memorandum  
12 of agreement or administrative consent order, an amount not less than  
13 60% of the taxes otherwise due;

14 (8) In the eighth tax year following execution of a memorandum of  
15 agreement or administrative consent order, an amount not less than  
16 70% of the taxes otherwise due;

17 (9) In the ninth tax year following execution of a memorandum of  
18 agreement or administrative consent order, an amount not less than  
19 80% of the taxes otherwise due;

20 (10) In the tenth and all subsequent tax years following execution  
21 of a memorandum of agreement or administrative consent order, the  
22 exemption shall expire and the full amount of the assessed real  
23 property taxes, taking into account the value of the real property in its  
24 remediated state, shall be due.

25 Where a property tax exemption has been extended because of the  
26 proposed implementation of a <sup>2</sup>[permanent] limited restricted use  
27 remedial action or unrestricted use<sup>2</sup> remedial action, the municipality  
28 may provide for a different schedule for the payment in lieu of real  
29 property taxes which payments may not exceed the length of the  
30 property tax exemption.

31 c. For the purposes of this section, <sup>2</sup>only<sup>2</sup> the amount of "taxes  
32 otherwise due" shall be determined by using the assessed valuation of  
33 the environmental opportunity zone at the time of the approval by the  
34 assessor of the exemption, regardless of any improvement made to the  
35 environmental opportunity zone thereafter <sup>2</sup>and as if the designation  
36 of the environmental opportunity zone had not occurred<sup>2</sup>.

37 d. Notwithstanding any other provision in P.L.1995, c.413  
38 (C.54:4-3.150 et seq.), if at any time the governing body of the  
39 municipality finds that the memorandum of agreement for remediation  
40 of the environmental opportunity zone has been terminated at the  
41 option of the applicant, unless if an administrative consent order is  
42 issued in its place, or that any of the conditions in the ordinance as  
43 required by subsection e. of section 5 of P.L.1995, c.413  
44 (C.54:4-3.154) are not met, the period of the property tax exemption  
45 shall end.

46 (cf: P.L.1995, c.413, s.7)

1       <sup>2</sup>[25. Section 2 of P.L.1960, c.183 (C.40:37A-45) is amended to  
2 read as follows:

3       2. As used in this act, unless a different meaning clearly appears  
4 from the context:

5       (a) "Authority" shall mean a public body created pursuant to this  
6 act;

7       (b) "Bond resolution" shall have the meaning ascribed thereto in  
8 section 17 of P.L.1960, c.183 (C.40:37A-60);

9       (c) "Bonds" shall mean bonds, notes or other obligations issued  
10 pursuant to this act;

11       (d) "Construct" and "construction" shall connote and include acts  
12 of clearance, demolition, construction, development or redevelopment,  
13 reconstruction, replacement, extension, improvement and betterment;

14       (e) "Cost" shall mean, in addition to the usual connotations  
15 thereof, the cost of planning, acquisition or construction of all or any  
16 part of any public facility or facilities of an authority and of all or any  
17 property, rights, easements, privileges, agreements and franchises  
18 deemed by the authority to be necessary or useful and convenient  
19 therefor or in connection therewith, including interest or discount on  
20 bonds, cost of issuance of bonds, architectural, engineering and  
21 inspection costs and legal expenses, cost of financial, professional and  
22 other estimates and advice, organization, administrative, operating and  
23 other expenses of the authority prior to and during such acquisition or  
24 construction, and all such other expenses as may be necessary or  
25 incident to the financing, acquisition, construction and completion of  
26 such public facility or facilities or part thereof and the placing of the  
27 same fully in operation or the disposition of the same, and also such  
28 provision or reserves for working capital, operating, maintenance or  
29 replacement expenses or for payment or security of principal of or  
30 interest on bonds during or after such acquisition or construction as  
31 the authority may determine, and also reimbursements to the authority  
32 or any governmental unit or person of any moneys theretofore  
33 expended for the purposes of the authority;

34       (f) The term "county" shall mean any county of any class of the  
35 State and shall include, without limitation, the terms "the county" and  
36 "beneficiary county" defined in this act, and the term "the county" shall  
37 mean the county which created an authority pursuant to this act;

38       (g) "Development project" shall mean any lands, structures, or  
39 property or facilities acquired or constructed or to be acquired or  
40 constructed by an authority for the purposes of the authority described  
41 in subsection (e) of section 11 of P.L.1960, c.183 (C.40:37A-54);

42       (h) "Facility charges" shall have the meaning ascribed to said term  
43 in section 14 of P.L.1960, c.183 (C.40:37A-57);

44       (i) "Facility revenues" shall have the meaning ascribed to said term  
45 in subsection (e) of section 20 of P.L.1960, c.183 (C.40:37A-63);

46       (j) "Governing body" shall mean, in the case of a county, the

1 board of chosen freeholders, or in the case of a county operating under  
2 article 3 or 5 of the "Optional County Charter Law" (P.L.1972, c.154;  
3 C.40:41A-1 et seq.) as defined thereunder, and, in the case of a  
4 municipality, the commission, council, board or body, by whatever  
5 name it may be known, having charge of the finances of the  
6 municipality;

7 (k) "Governmental unit" shall mean the United States of America  
8 or the State or any county or municipality or any subdivision,  
9 department, agency, or instrumentality heretofore or hereafter created,  
10 designated or established by or for the United States of America or the  
11 State or any county or municipality;

12 (l) "Local bond law" shall mean chapter 2 of Title 40A,  
13 Municipalities and Counties, of the New Jersey Statutes (N.J.S.) as  
14 amended and supplemented;

15 (m) "Municipality" shall mean any city, borough, village, town, or  
16 township of the State but not a county or a school district;

17 (n) "Person" shall mean any person, partnership, association,  
18 corporation or entity other than a nation, state, county or municipality  
19 or any subdivision, department, agency or instrumentality thereof;

20 (o) "Project" shall have the meaning ascribed to said term in  
21 section 17 of P.L.1960, c.183 (C.40:37A-60);

22 (p) "Public facility" shall mean any lands, structures, franchises,  
23 equipment, or other property or facilities acquired, constructed,  
24 owned, financed, or leased by the authority or any other governmental  
25 unit or person to accomplish any of the purposes of an authority  
26 authorized by section 11 of P.L.1960, c.183 (C.40:37A-54);

27 (q) "Real property" shall mean lands within or without the State,  
28 above or below water, and improvements thereof or thereon, or any  
29 riparian or other rights or interests therein;

30 (r) "Garbage and solid waste disposal system" shall mean the  
31 plants, structures and other real and personal property acquired,  
32 constructed or operated or to be acquired, constructed or operated by  
33 a county improvement authority, including incinerators, sanitary  
34 landfill facilities or other plants for the treatment and disposal of  
35 garbage, solid waste and refuse matter and all other real and personal  
36 property and rights therein and appurtenances necessary or useful and  
37 convenient for the collection and treatment or disposal in a sanitary  
38 manner of garbage, solid waste and refuse matter (but not including  
39 sewage);

40 (s) "Garbage, solid waste or refuse matter" shall mean garbage,  
41 refuse and other discarded materials resulting from industrial,  
42 commercial and agricultural operations, and from domestic and  
43 community activities, and shall include all other waste materials  
44 including sludge, chemical waste, hazardous wastes and liquids, except  
45 for liquids which are treated in public sewage treatment plants and  
46 except for solid animal and vegetable wastes collected by swine

1 producers licensed by the State Department of Agriculture to collect,  
2 prepare and feed such wastes to swine on their own farms;

3 (t) "Blighted, deteriorated or deteriorating area" may include an  
4 area determined heretofore by the municipality to be blighted in  
5 accordance with the provisions of P.L.1949, c.187, repealed by  
6 P.L.1992, c.79 (C.40:55-21.1 et seq.) and, in addition, areas which are  
7 determined by the municipality, pursuant to the same procedures as  
8 provided in said law, to be blighted, deteriorated or deteriorating  
9 because of structures or improvements which are dilapidated or  
10 characterized by disrepair, lack of ventilation or light or sanitary  
11 facilities, faulty arrangement, location, or design, or other unhealthful  
12 or unsafe conditions;

13 (u) "Redevelopment" may include planning, replanning,  
14 conservation, rehabilitation, clearance, remediation, development and  
15 redevelopment; and the construction and rehabilitation and provision  
16 for construction and rehabilitation of residential, commercial,  
17 industrial, public or other structures and the grant or dedication or  
18 rededication of spaces as may be appropriate or necessary in the  
19 interest of the general welfare for streets, parks, playgrounds, or other  
20 public purposes including recreational and other facilities incidental or  
21 appurtenant thereto, in accordance with a redevelopment plan  
22 approved by the governing body of a municipality;

23 (v) "Redevelopment plan" shall mean a plan as it exists from time  
24 to time for the redevelopment of all or any part of a redevelopment  
25 area, which plan shall be sufficiently complete to indicate such land  
26 acquisition, demolition and removal of structures, redevelopment,  
27 improvements, conservation or rehabilitation as may be proposed to  
28 be carried out in the area of the project, zoning and planning changes,  
29 if any, land uses, maximum densities, building requirements, the plan's  
30 relationship to definite local objectives respecting appropriate land  
31 uses, improved traffic, public transportation, public utilities,  
32 recreational and community facilities, and other public improvements,  
33 the need for and extent of remediation of any lands, and provision for  
34 relocation of any residents and occupants to be displaced in a manner  
35 which has been or is likely to be approved by the Department of  
36 Community Affairs pursuant to the "Relocation Assistance Law of  
37 1967," P.L.1967, c.79 (C.52:31B-1 et seq.) and the "Relocation  
38 Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) and rules and  
39 regulations pursuant thereto;

40 (w) "Redevelopment project" shall mean any undertakings and  
41 activities for the elimination, and for the prevention of the  
42 development or spread, of blighted, deteriorated, or deteriorating  
43 areas and may involve any work or undertaking pursuant to a  
44 redevelopment plan; such undertaking may include: (1) acquisition of  
45 real property and demolition, removal or rehabilitation of buildings and  
46 improvements thereon; (2) carrying out plans for a program of

1 voluntary repair and rehabilitation of buildings or other improvements;  
2 and (3) installation, construction or reconstruction of streets, utilities,  
3 parks, playgrounds or other improvements necessary for carrying out  
4 the objectives of the redevelopment project;

5 (x) "Redeveloper" shall mean any person or governmental unit that  
6 shall enter into or propose to enter into a contract with an authority  
7 for the redevelopment of an area or any part thereof under the  
8 provisions of this act;

9 (y) "Redevelopment area" shall mean an area of a municipality  
10 which the governing body thereof finds is a blighted area, a  
11 contaminated redevelopment site, or an area in need of rehabilitation  
12 whose redevelopment is necessary to effectuate the public purposes  
13 declared in this act. A redevelopment area may include lands,  
14 buildings, or improvements which of themselves are not detrimental to  
15 the public health, safety or welfare, but whose inclusion is found  
16 necessary, with or without change in their condition, for the effective  
17 redevelopment of the area of which they are a part;

18 (z) "Sludge" shall mean any solid, semisolid, or liquid waste  
19 generated from a municipal, industrial or other sewage treatment plant,  
20 water supply treatment plant, or air pollution control facility, or any  
21 other such waste having similar characteristics and effects, but shall  
22 not include effluent; [and ]

23 (aa) "Beneficiary county" shall mean any county that has not  
24 created an authority pursuant to this act ;

25 (bb) "Contaminated redevelopment site" means any parcel of real  
26 property that is now vacant or underutilized, which is in need of a  
27 remediation due to a perceived or actual discharge or threatened  
28 discharge of a contaminant, and which has been so designated by the  
29 municipality in which it is located. "Contaminated redevelopment site"  
30 may only include an environmental opportunity zone designated by a  
31 municipality pursuant to P.L.1995, c.413 (C.54:4-3.150 et seq.) or an  
32 area determined to be in need of redevelopment pursuant to P.L. 1992,  
33 c.79 (C.40A:12A-1 et seq.):

34 (cc) "Remediation" means all necessary actions to investigate and  
35 clean up or respond to any known, suspected, or threatened discharge  
36 of contaminants, including, as necessary, the preliminary assessment,  
37 site investigation, remedial investigation, and remedial action;

38 (dd) "Contaminant" means any discharged hazardous substance as  
39 defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b),  
40 hazardous waste as defined pursuant to section 1 of P.L.1976, c.99  
41 (C.13:1E-38), or pollutant as defined pursuant to section 3 of  
42 P.L.1977, c.74 (C.58:10A-3) and;

43 (ee) "Discharge" means an intentional or unintentional action or  
44 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
45 emitting, emptying, or dumping of a contaminant onto the land or into  
46 the waters of the State.

1 (cf: P.L.1994, c.76, s.1)]<sup>2</sup>

2

3 <sup>2</sup>[26. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to  
4 read as follows:

5 11. The purposes of every authority shall be (a) provision within  
6 the county or any beneficiary county of public facilities for use by the  
7 State, the county or any beneficiary county, or any municipality in any  
8 such county, or any two or more or any subdivisions, departments,  
9 agencies or instrumentalities of any of the foregoing for any of their  
10 respective governmental purposes, (b) provision within the county or  
11 any beneficiary county of public facilities for use as convention halls,  
12 or the rehabilitation, improvement or enlargement of any convention  
13 hall, including appropriate and desirable appurtenances located within  
14 the convention hall or near, adjacent to or over it within boundaries  
15 determined at the discretion of the authority, including but not limited  
16 to office facilities, commercial facilities, community service facilities,  
17 parking facilities, hotel facilities and other facilities for the  
18 accommodation and entertainment of tourists and visitors, (c)  
19 provision within the county or any beneficiary county of structures,  
20 franchises, equipment and facilities for operation of public  
21 transportation or for terminal purposes, including development and  
22 improvement of port terminal structures, facilities and equipment for  
23 public use in counties in, along or through which a navigable river  
24 flows, (d) provision within the county or any beneficiary county of  
25 structures or other facilities used or operated by the authority or any  
26 governmental unit in connection with, or relative to development and  
27 improvement of, aviation for military or civilian purposes, including  
28 research in connection therewith, and including structures or other  
29 facilities for the accommodation of passengers, (e) provision within the  
30 county or any beneficiary county of a public facility for a combination  
31 of governmental and nongovernmental uses; provided that not more  
32 than 50% of the usable space in any such facility shall be made  
33 available for nongovernmental use under a lease or other agreement by  
34 or with the authority, (f) acquisition of any real property within the  
35 county or any beneficiary county, with or without the improvements  
36 thereof or thereon or personal property appurtenant or incidental  
37 thereto, from the United States of America or any department, agency  
38 or instrumentality heretofore or hereafter created, designated or  
39 established by or for it, and the clearance, development or  
40 redevelopment, improvement, use or disposition of the acquired lands  
41 and premises in accordance with the provisions and for the purposes  
42 stated in this act, including the construction, reconstruction,  
43 demolition, rehabilitation, conversion, repair or alteration of  
44 improvements on or to said lands and premises, and structures and  
45 facilities incidental to the foregoing as may be necessary, convenient  
46 or desirable, (g) acquisition, construction, maintenance and operation

1 of garbage and solid waste disposal systems for the purpose of  
2 collecting and disposing of garbage, solid waste or refuse matter,  
3 whether owned or operated by any person, the authority or any other  
4 governmental unit, within or without the county or any beneficiary  
5 county, (h) the improvement, furtherance and promotion of the tourist  
6 industries and recreational attractiveness of the county or any  
7 beneficiary county through the planning, acquisition, construction,  
8 improvement, maintenance and operation of facilities for the recreation  
9 and entertainment of the public, which facilities may include, without  
10 being limited to, a center for the performing and visual arts, (i)  
11 provision of loans and other financial assistance and technical  
12 assistance for the construction, reconstruction, demolition,  
13 rehabilitation, conversion, repair or alteration of buildings or facilities  
14 designed to provide decent, safe and sanitary dwelling units for  
15 persons of low and moderate income in need of housing, including the  
16 acquisition of land, equipment or other real or personal properties  
17 which the authority determines to be necessary, convenient or  
18 desirable appurtenances, all in accordance with the provisions of this  
19 act, as amended and supplemented, (j) planning, initiating and carrying  
20 out redevelopment projects for the elimination, and for the prevention  
21 of the development or spread of blighted, deteriorated or deteriorating  
22 areas and the disposition, for uses in accordance with the objectives of  
23 the redevelopment project, of any property or part thereof acquired in  
24 the area of such project, (k) any combination or combinations of the  
25 foregoing or following, [and] (l) subject to the prior approval of the  
26 Local Finance Board, the planning, design, acquisition, construction,  
27 improvement, renovation, installation, maintenance and operation of  
28 facilities or any other type of real or personal property within the  
29 county for a corporation or other person organized for any one or  
30 more of the purposes described in subsection a. of N.J.S.15A:2-1  
31 except those facilities or any other type of real or personal property  
32 which can be financed pursuant to the provisions of P.L.1972, c.29  
33 (C.26:2I-1 et seq.) as amended, and (m) planning, initiating,  
34 promoting, financing, and coordinating necessary actions to remediate  
35 and redevelop contaminated redevelopment sites.  
36 (cf: P.L.1994, c.110, s.1)]<sup>2</sup>

37  
38 <sup>2</sup>[27. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to  
39 read as follows:

40 12. Every authority shall be a public body politic and corporate  
41 constituting a political subdivision of the State established as an  
42 instrumentality exercising public and essential governmental functions  
43 to provide for the public convenience, benefit and welfare and shall  
44 have perpetual succession and, for the effectuation of its purposes,  
45 have the following additional powers:

46 (a) To adopt and have a common seal and to alter the same at

1 pleasure;

2 (b) To sue and be sued;

3 (c) To acquire, hold, use and dispose of its facility charges and  
4 other revenues and other moneys;

5 (d) To acquire, rent, hold, use and dispose of other personal  
6 property for the purposes of the authority;

7 (e) Subject to the provisions of section 26 of this act, to acquire by  
8 purchase, gift, condemnation or otherwise, or lease as lessee, real  
9 property and easements or interests therein necessary or useful and  
10 convenient for the purposes of the authority, whether subject to  
11 mortgages, deeds of trust or other liens or otherwise, and to hold and  
12 to use the same, and to dispose of property so acquired no longer  
13 necessary for the purposes of the authority; provided that the authority  
14 may dispose of such property at any time to any governmental unit or  
15 person if the authority shall receive a leasehold interest in the property  
16 for such term as the authority deems appropriate to fulfill its  
17 purposes;

18 (f) Subject to the provisions of section 13 of this act, to lease to  
19 any governmental unit or person, all or any part of any public facility  
20 for such consideration and for such period or periods of time and upon  
21 such other terms and conditions as it may fix and agree upon;

22 (g) To enter into agreements to lease, as lessee, public facilities for  
23 such term and under such conditions as the authority may deem  
24 necessary and desirable to fulfill its purposes, and to agree, pursuant  
25 thereto, to be unconditionally obligated to make payments for the term  
26 of the lease, without set-off or counterclaim, whether or not the public  
27 facility is completed, operating or operable, and notwithstanding the  
28 destruction of, damage to, or suspension, interruption, interference,  
29 reduction or curtailment of the availability or output of the public  
30 facility to which the agreement applies;

31 (h) To extend credit or make loans to any governmental unit or  
32 person for the planning, design, acquisition, construction, equipping  
33 and furnishing of a public facility, upon the terms and conditions that  
34 the loans be secured by loan and security agreements, mortgages,  
35 leases and other instruments, the payments on which shall be sufficient  
36 to pay the principal of and interest on any bonds issued for the purpose  
37 by the authority, and upon such other terms and conditions as the  
38 authority shall deem reasonable;

39 (i) Subject to the provisions of section 13 of this act, to make  
40 agreements of any kind with any governmental unit or person for the  
41 use or operation of all or any part of any public facility for such  
42 consideration and for such period or periods of time and upon such  
43 other terms and conditions as it may fix and agree upon;

44 (j) To borrow money and issue negotiable bonds or notes or other  
45 obligations and provide for and secure the payment of any bonds and  
46 the rights of the holders thereof, and to purchase, hold and dispose of

1 any bonds;

2 (k) To apply for and to accept gifts or grants of real or personal  
3 property, money, material, labor or supplies for the purposes of the  
4 authority from any governmental unit or person, and to make and  
5 perform agreements and contracts and to do any and all things  
6 necessary or useful and convenient in connection with the procuring,  
7 acceptance or disposition of such gifts or grants;

8 (l) To determine the location, type and character of any public  
9 facility and all other matters in connection with all or any part of any  
10 public facility which it is authorized to own, construct, establish,  
11 effectuate or control;

12 (m) To make and enforce bylaws or rules and regulations for the  
13 management and regulation of its business and affairs and for the use,  
14 maintenance and operation of any public facility, and to amend the  
15 same;

16 (n) To do and perform any acts and things authorized by this act  
17 under, through or by means of its own officers, agents and employees,  
18 or by contract with any governmental unit or person;

19 (o) To acquire, purchase, construct, lease, operate, maintain and  
20 undertake any project and to fix and collect facility charges for the use  
21 thereof;

22 (p) To mortgage, pledge or assign or otherwise encumber all or  
23 any portion of its revenues and other income, real and personal  
24 property, projects and facilities for the purpose of securing its bonds,  
25 notes and other obligations or otherwise in furtherance of the purpose  
26 of this act;

27 (q) To extend credit or make loans to redevelopers for the  
28 planning, designing, acquiring, constructing, reconstructing,  
29 improving, remediation, equipping and furnishing any redevelopment  
30 project or redevelopment work;

31 (r) To conduct examinations and investigations, hear testimony and  
32 take proof, under oath at public or private hearings of any material  
33 matter, require the attendance of witnesses and the production of  
34 books and papers and issue commissions for the examination of  
35 witnesses who are out of the State, unable to attend, or excused from  
36 attendance;

37 (s) To authorize a committee designated by it consisting of one or  
38 more members, or counsel, or any officer or employee to conduct any  
39 such investigation or examination, in which case such committee,  
40 counsel, officer or employee shall have power to administer oaths,  
41 take affidavits and issue [subpenas] subpoenas or commissions; [and]

42 (t) To enter into any and all agreements or contracts, execute any  
43 and all instruments, and do and perform any and all acts or things  
44 necessary, convenient or desirable for the purposes of the authority or  
45 to carry out any power expressly given in this act subject to P.L.1971,  
46 c.198, "Local Public Contracts Law" (C.40A:11-1 et seq.) ; and

1       (u) To conduct and coordinate public outreach efforts to inform  
2 the public of the health and environmental risks, as well as the  
3 economic benefits, of the remediation and redevelopment of  
4 contaminated redevelopment sites.

5 (cf: P.L.1982, c. 113, s. 8)]<sup>2</sup>

6  
7       <sup>2</sup>[28. (New section) For purposes of the redevelopment of  
8 contaminated redevelopment areas, and subject to the provisions of  
9 this act, a county improvement authority may:

10       a. Acquire or contract to acquire from any person, firm or  
11 corporation, public or private, by contribution, gift, grant, bequest,  
12 devise, purchase, condemnation or otherwise, real or personal  
13 property or any interest therein, including such property as it may  
14 deem necessary or proper, although temporarily not required for such  
15 purposes, in a redevelopment area and in any area designated by the  
16 municipal governing body as necessary for carrying out the relocation  
17 of the residents, industry and commerce displaced from a  
18 redevelopment area;

19       b. Demolish, remove or rehabilitate buildings or other  
20 improvements in any area acquired and install, construct or  
21 reconstruct streets, facilities, utilities and site improvements essential  
22 to the preparation of sites for use in accordance with the  
23 redevelopment plan;

24       c. Relocate or arrange for the relocation of residents and  
25 occupants of an area;

26       d. Dispose of land so acquired for the uses specified in the  
27 redevelopment plan as determined by it to any person, firm, or  
28 corporation or to any public agency by sale, lease or exchange;

29       e. Request the municipal planning board, if any, to recommend, or  
30 request the municipal governing body pursuant to existing law to  
31 designate, areas in need of redevelopment or as environmental  
32 opportunity zones and to make recommendations for such  
33 development;

34       f. Study the recommendations of the municipal planning board for  
35 redevelopment of any area and to make its own investigations and  
36 recommendations as to current trends in the municipality, blighted  
37 areas and blighting factor, to the governing body of the municipality  
38 thereon;

39       g. Publish and disseminate information;

40       h. Prepare or arrange by contract for preparation of plans by  
41 registered architects or licensed professional engineers or planners for  
42 the carrying out of the redevelopment projects;

43       i. Arrange or contract with public agencies or redevelopers for the  
44 planning, replanning, conservation, rehabilitation, construction, or  
45 undertaking of any project, or redevelopment work, or any part  
46 thereof, to provide as part of any such arrangement or contract for

1 extension of credit or making of loans to redevelopers to finance any  
2 project or redevelopment work, and to arrange or contract with public  
3 agencies for the opening, grading or closing of streets, roads,  
4 roadways, alleys, or other places or for the furnishing of facilities or  
5 for the acquisition by such agency of property options or property  
6 rights or for the furnishing of property or services in connection with  
7 a redevelopment area;

8 j. Arrange or contract with a public agency, to the extent that it is  
9 within the scope of that agency's functions, to cause the services  
10 customarily provided by such other agency to be rendered for the  
11 benefit of the occupants of any redevelopment area, and to have such  
12 other agency provide and maintain parks, recreation centers, schools,  
13 sewerage, transportation, water and other municipal facilities adjacent  
14 to or in connection with redevelopment areas;

15 k. Enter upon any building or property in any redevelopment area  
16 in order to conduct investigations or make surveys, soundings or test  
17 borings necessary to carry out the purposes of this act;

18 l. Arrange or contract with a public agency for the relocation of  
19 residents, industry or commerce displaced from a redevelopment area;

20 m. Make (1) plans for carrying out a program of voluntary repair  
21 and rehabilitation of buildings and improvements; and (2) plans for the  
22 enforcement of laws, codes, and regulations relating to the use of land  
23 and the use and occupancy of buildings and improvements, and to the  
24 compulsory repair, rehabilitation, demolition, or removal of buildings  
25 and improvements;

26 n. Develop, test, and report methods and techniques, and carry out  
27 demonstrations and other activities, for the prevention and the  
28 elimination of blight; and

29 o. To finance by mortgage loans or otherwise the construction  
30 or establishment of retail food outlets and to make temporary loans or  
31 advances in anticipation of permanent loans.]<sup>2</sup>

32  
33 <sup>2</sup>25. (New Section) The Department of Environmental Protection  
34 shall:

35 (1) Prepare materials for dissemination to the public that explain  
36 the environmental and health risks associated with site remediations in  
37 general and which are designed to assist local governments and the  
38 public in assessing the risks associated with particular site remediation  
39 projects;

40 (2) Serve as an informational resource for county improvement  
41 authorities who are involved in remediating and redeveloping  
42 contaminated redevelopment areas and for municipalities and residents  
43 of this State who may be impacted by the remediation or  
44 redevelopment of contaminated real property regardless of who is  
45 undertaking the remediation or redevelopment;

46 (3) Work with residents and municipalities to form neighborhood

1 informational groups whose purpose is to research, understand and  
2 disseminate information in neighborhoods concerning the public health  
3 and environmental risks associated with site remediations and  
4 redevelopment, as well as the economic benefits to be gained; and  
5 (4) Make recommendations to the Legislature and the Governor  
6 in order to improve the public understanding, perception and risk  
7 associated with site remediations in the State.<sup>2</sup>

8  
9 <sup>2</sup>26. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read  
10 as follows:

11 12. The department shall formulate comprehensive policies for the  
12 conservation of the natural resources of the State, the promotion of  
13 environmental protection and the prevention of pollution of the  
14 environment of the State. The department shall in addition to the  
15 powers and duties vested in it by this act or by any other law have the  
16 power to:

17 a. Conduct and supervise research programs for the purpose of  
18 determining the causes, effects and hazards to the environment and its  
19 ecology;

20 b. Conduct and supervise Statewide programs of education,  
21 including the preparation and distribution of information relating to  
22 conservation, environmental protection and ecology;

23 c. Require the registration of persons engaged in operations which  
24 may result in pollution of the environment and the filing of reports by  
25 them containing such information as the department may prescribe to  
26 be filed relative to pollution of the environment, all in accordance with  
27 applicable codes, rules or regulations established by the department;

28 d. Enter and inspect any building or place for the purpose of  
29 investigating an actual or suspected source of pollution of the  
30 environment and ascertaining compliance or noncompliance with any  
31 codes, rules and regulations of the department. Any information  
32 relating to secret processes concerning methods of manufacture or  
33 production, obtained in the course of such inspection, investigation or  
34 determination, shall be kept confidential, except this information shall  
35 be available to the department for use, when relevant, in any  
36 administrative or judicial proceedings undertaken to administer,  
37 implement, and enforce State environmental law, but shall remain  
38 subject only to those confidentiality protections otherwise afforded by  
39 federal law and by the specific State environmental laws and  
40 regulations that the department is administering, implementing and  
41 enforcing in that particular case or instance. In addition, this  
42 information shall be available upon request to the United States  
43 Government for use in administering, implementing, and enforcing  
44 federal environmental law, but shall remain subject to the  
45 confidentiality protection afforded by federal law. If samples are  
46 taken for analysis, a duplicate of the analytical report shall be furnished

1 promptly to the person suspected of causing pollution of the  
2 environment;

3 e. Receive or initiate complaints of pollution of the environment,  
4 including thermal pollution, hold hearings in connection therewith and  
5 institute legal proceedings for the prevention of pollution of the  
6 environment and abatement of nuisances in connection therewith and  
7 shall have the authority to seek and obtain injunctive relief and the  
8 recovery of fines and penalties in summary proceedings in the  
9 Superior Court;

10 f. Prepare, administer and supervise Statewide, regional and local  
11 programs of conservation and environmental protection, giving due  
12 regard for the ecology of the varied areas of the State and the  
13 relationship thereof to the environment, and in connection therewith  
14 prepare and make available to appropriate agencies in the State  
15 technical information concerning conservation and environmental  
16 protection, cooperate with the Commissioner of Health in the  
17 preparation and distribution of environmental protection and health  
18 bulletins for the purpose of educating the public, and cooperate with  
19 the Commissioner of Health in the preparation of a program of  
20 environmental protection;

21 g. Encourage, direct and aid in coordinating State, regional and  
22 local plans and programs concerning conservation and environmental  
23 protection in accordance with a unified Statewide plan which shall be  
24 formulated, approved and supervised by the department. In reviewing  
25 such plans and programs and in determining conditions under which  
26 such plans may be approved, the department shall give due  
27 consideration to the development of a comprehensive ecological and  
28 environmental plan in order to be assured insofar as is practicable that  
29 all proposed plans and programs shall conform to reasonably  
30 contemplated conservation and environmental protection plans for the  
31 State and the varied areas thereof;

32 h. Administer or supervise programs of conservation and  
33 environmental protection, prescribe the minimum qualifications of all  
34 persons engaged in official environmental protection work, and  
35 encourage and aid in coordinating local environmental protection  
36 services;

37 i. Establish and maintain adequate bacteriological, radiological and  
38 chemical laboratories with such expert assistance and such facilities as  
39 are necessary for routine examinations and analyses, and for original  
40 investigations and research in matters affecting the environment and  
41 ecology;

42 j. Administer or supervise a program of industrial planning for  
43 environmental protection; encourage industrial plants in the State to  
44 undertake environmental and ecological engineering programs; and  
45 cooperate with the State Departments of Health, Labor, and  
46 Commerce and Economic Development in formulating rules and

- 1 regulations concerning industrial sanitary conditions;
- 2 k. Supervise sanitary engineering facilities and projects within the  
3 State, authority for which is now or may hereafter be vested by law  
4 in the department, and shall, in the exercise of such supervision, make  
5 and enforce rules and regulations concerning plans and specifications,  
6 or either, for the construction, improvement, alteration or operation  
7 of all public water supplies, all public bathing places, landfill  
8 operations and of sewerage systems and disposal plants for treatment  
9 of sewage, wastes and other deleterious matter, liquid, solid or  
10 gaseous, require all such plans or specifications, or either, to be first  
11 approved by it before any work thereunder shall be commenced,  
12 inspect all such projects during the progress thereof and enforce  
13 compliance with such approved plans and specifications;
- 14 l. Undertake programs of research and development for the  
15 purpose of determining the most efficient, sanitary and economical  
16 ways of collecting, disposing or utilizing of solid waste;
- 17 m. Construct and operate, on an experimental basis, incinerators  
18 or other facilities for the disposal of solid waste, provide the various  
19 municipalities and counties of this State, the Board of Public Utilities,  
20 and the Division of Local Government Services in the Department of  
21 Community Affairs with statistical data on costs and methods of solid  
22 waste collection, disposal and utilization;
- 23 n. Enforce the State air pollution, water pollution, conservation,  
24 environmental protection, waste and refuse disposal laws, rules and  
25 regulations, including the making and signing of a complaint and  
26 summons for their violation by serving the summons upon the violator  
27 and thereafter filing the complaint promptly with a court having  
28 jurisdiction;
- 29 o. Acquire by purchase, grant, contract or condemnation, title to  
30 real property, for the purpose of demonstrating new methods and  
31 techniques for the collection or disposal of solid waste;
- 32 p. Purchase, operate and maintain, pursuant to the provisions of  
33 this act, any facility, site, laboratory, equipment or machinery  
34 necessary to the performance of its duties pursuant to this act;
- 35 q. Contract with any other public agency or corporation  
36 incorporated under the laws of this or any other state for the  
37 performance of any function under this act;
- 38 r. With the approval of the Governor, cooperate with, apply for,  
39 receive and expend funds from, the federal government, the State  
40 Government, or any county or municipal government or from any  
41 public or private sources for any of the objects of this act;
- 42 s. Make annual and such other reports as it may deem proper to  
43 the Governor and the Legislature, evaluating the demonstrations  
44 conducted during each calendar year;
- 45 t. Keep complete and accurate minutes of all hearings held before  
46 the commissioner or any member of the department pursuant to the

1 provisions of this act. All such minutes shall be retained in a  
 2 permanent record, and shall be available for public inspection at all  
 3 times during the office hours of the department;

4 u. Require any person subject to a lawful order of the department,  
 5 which provides for a period of time during which such person subject  
 6 to the order is permitted to correct a violation, to post a performance  
 7 bond or other security with the department in such form and amount  
 8 as shall be determined by the department. Such bond need not be for  
 9 the full amount of the estimated cost to correct the violation but may  
 10 be in such amount as will tend to insure good faith compliance with  
 11 said order. The department shall not require such a bond or security  
 12 from any public body, agency or authority. In the event of a failure  
 13 to meet the schedule prescribed by the department, the sum named in  
 14 the bond or other security shall be forfeited unless the department  
 15 shall find that the failure is excusable in whole or in part for good  
 16 cause shown, in which case the department shall determine what  
 17 amount of said bond or security, if any, is a reasonable forfeiture  
 18 under the circumstances. Any amount so forfeited shall be utilized by  
 19 the department for the correction of the violation or violations, or for  
 20 any other action required to insure compliance with the order ; and

21 v. Encourage and aid in coordinating State, regional and local  
 22 plans, efforts and programs concerning the remediation and reuse of  
 23 former industrial or commercial properties that are currently  
 24 underutilized or abandoned and at which there has been, or is  
 25 perceived to have been, a discharge, or threat of a discharge, of a  
 26 contaminant. For the purposes of this subsection, "underutilized  
 27 property" shall not include properties undergoing a reasonably timely  
 28 remediation or redevelopment process.<sup>2</sup>

29 (cf: P.L.1984, c.5, s.1)

30  
 31 <sup>2</sup>27. Section 2 of P.L.1976, c.141 (C.58:10-23.11a) is amended to  
 32 read as follows:

33 2. The Legislature finds and declares: that New Jersey's lands and  
 34 waters constitute a unique and delicately balanced resource; that the  
 35 protection and preservation of these lands and waters promote the  
 36 health, safety and welfare of the people of this State; that the tourist  
 37 and recreation industry dependent on clean waters and beaches is vital  
 38 to the economy of this State; that the State is the trustee, for the  
 39 benefit of its citizens, of all natural resources within its jurisdiction;  
 40 and that the storage and transfer of petroleum products and other  
 41 hazardous substances between vessels, between facilities and vessels,  
 42 and between facilities, whether onshore or offshore, is a hazardous  
 43 undertaking and imposes risk of damage to persons and property  
 44 within this State.

45 The Legislature finds and declares that the discharge of petroleum  
 46 products and other hazardous substances within or outside the

1 jurisdiction of this State constitutes a threat to the economy and  
2 environment of this State. The Legislature intends by the passage of  
3 this act to exercise the powers of this State to control the transfer and  
4 storage of hazardous substances and to provide liability for damage  
5 sustained within this State as a result of any discharge of said  
6 substances, by requiring the prompt containment and removal of such  
7 pollution and substances, and to provide a fund for swift and adequate  
8 compensation to resort businesses and other persons damaged by such  
9 discharges, and to provide for the defense and indemnification of  
10 certain persons under contract with the State for claims or actions  
11 resulting from the provision of services or work to mitigate or clean  
12 up a release or discharge of hazardous substances.

13 The Legislature further finds and declares that many former  
14 industrial sites in the State remain vacant or underutilized in part  
15 because they have been contaminated by a discharge of a hazardous  
16 substance; that these properties constitute an economic drain on the  
17 State and the municipalities in which they exist; that it is in the public  
18 interest to have these properties cleaned up sufficiently so that they  
19 can be safely returned to productive use; and that it should be a  
20 function of the Department of Environmental Protection to facilitate  
21 and coordinate activities and functions designed to clean up  
22 contaminated sites in this State.<sup>2</sup>

23 (cf: P.L.1991, c.373, s.12)

24

25 <sup>2</sup>28. Section 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to  
26 read as follows:

27 7. a. (1) Whenever any hazardous substance is discharged, the  
28 department may, in its discretion, act to clean up and remove or  
29 arrange for the cleanup and removal of [such] the discharge or may  
30 direct the discharger to clean up and remove, or arrange for the  
31 cleanup and removal of, [such] the discharge. If the discharge occurs  
32 at any hazardous waste facility or solid waste [disposal] facility, the  
33 department may order the hazardous waste facility or solid waste  
34 facility closed for the duration of the cleanup and removal operations.  
35 The department may monitor the discharger's compliance with any  
36 such directive. Any discharger who fails to comply with such a  
37 directive shall be liable to the department in an amount equal to three  
38 times the cost of such cleanup and removal, and shall be subject to the  
39 revocation or suspension of any license issued or permit [he holds]  
40 held authorizing [him] that person to operate a hazardous waste  
41 facility or solid waste [disposal] facility.

42 (2) Whenever one or more dischargers or persons cleans up and  
43 removes a discharge of a hazardous substance, those dischargers and  
44 persons shall have a right of contribution against all other dischargers  
45 and persons in any way responsible for a discharged hazardous  
46 substance or other persons who are liable for the cost of the cleanup

1 and removal of that discharge of a hazardous substance. In an action  
2 for contribution, the contribution plaintiffs need prove only that a  
3 discharge occurred for which the contribution defendant or defendants  
4 are liable pursuant to the provisions of subsection c. of section 8 of  
5 P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant  
6 shall have only the defenses to liability available to parties pursuant to  
7 subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In  
8 resolving contribution claims, a court may allocate the costs of cleanup  
9 and removal among liable parties using such equitable factors as the  
10 court determines are appropriate. Nothing in this subsection shall  
11 affect the right of any party to seek contribution pursuant to any other  
12 statute or under common law.

13 (3) [The department may, in its sole discretion, when it will  
14 expedite the cleanup and removal of any discharged hazardous  
15 substance, and when the department determines that it is in the public  
16 interest, authorize parties who have entered into an agreement with the  
17 department to clean up and remove or arrange for the cleanup and  
18 removal of a hazardous substance and who seek contribution, to  
19 collect treble damages from any contribution defendant who has failed  
20 or refused to comply with any directive, was named on the directive,  
21 and who is subject to contribution pursuant to this subsection. The  
22 treble damages shall be based on the amount of contribution owed by  
23 a contribution defendant, which share of contribution shall be  
24 determined by the court. A contribution defendant from whom treble  
25 damages is sought in a contribution action shall not be assessed treble  
26 damages by any court where the contribution defendant, for good  
27 cause shown, failed or refused to enter the settlement agreement with  
28 the department or with the contribution plaintiffs or where principles  
29 of fundamental fairness will be violated. One third of an award of  
30 treble damages in a contribution action pursuant to this paragraph shall  
31 be paid to the department, which sum shall be deposited in the New  
32 Jersey Spill Compensation Fund. The other two thirds of the treble  
33 damages award shall be shared by the contribution plaintiffs in the  
34 proportion of the responsibility for the cost of the cleanup and removal  
35 that the contribution plaintiffs have agreed to with the department or  
36 in an amount as has been agreed to by those parties. Nothing in this  
37 subsection affects the rights of any party to seek contribution pursuant  
38 to any other statute or under common law.]

39 In an action for contribution taken pursuant to this subsection, a  
40 contribution plaintiff may file a claim with the court for treble  
41 damages. A contribution plaintiff may be granted an award of treble  
42 damages by the court from one or more contribution defendants only  
43 upon a finding by the court that: (a) the contribution defendant is a  
44 person who was named on or subject to a directive issued by the  
45 department, who failed or refused to comply with such a directive, and  
46 who is subject to contribution pursuant to this subsection; (b) the

1 contribution plaintiff gave 30 days notice to the contribution defendant  
2 of the plaintiff's intention to seek treble damages pursuant to this  
3 subsection and gave the contribution defendant an opportunity to  
4 participate in the cleanup; (c) the contribution defendant failed or  
5 refused to enter into a settlement agreement with the contribution  
6 plaintiff; and (d) the contribution plaintiff entered into an agreement  
7 with the department to remediate the site. Notwithstanding the  
8 foregoing requirements, any authorization to seek treble damages  
9 made by the department prior to the effective date of P.L. . c.  
10 (pending in the Legislature as this bill) shall remain in effect, provided  
11 that the department or the contribution plaintiff gave notice to the  
12 contribution defendant of the plaintiff's request to the department for  
13 authorization to seek treble damages.

14 A contribution defendant from whom treble damages is sought in  
15 a contribution action shall not be assessed treble damages by any court  
16 where the contribution defendant, for good cause shown, failed or  
17 refused to enter the settlement agreement with the contribution  
18 plaintiff or where principles of fundamental fairness will be violated.  
19 One third of an award of treble damages in a contribution action  
20 pursuant to this paragraph shall be paid to the department, which sum  
21 shall be deposited in the New Jersey Spill Compensation Fund. The  
22 other two thirds of the treble damages award shall be shared by the  
23 contribution plaintiffs in the proportion of the responsibility for the  
24 cost of the cleanup and removal that the contribution plaintiffs have  
25 agreed to with the department or in an amount as has been agreed to  
26 by those parties.

27 Cleanup and removal of hazardous substances and actions to  
28 minimize damage from discharges shall, to the greatest extent possible,  
29 be in accordance with the National Contingency Plan for cleanup and  
30 removal of oil and hazardous substances established pursuant to  
31 section 311(c)(2) of the federal Water Pollution Control Act  
32 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. s. 1251 et seq.).

33 Whenever the department acts to clean up and remove a discharge  
34 or contracts to secure prospective cleanup and removal services, it is  
35 authorized to draw upon the money available in the fund. Such money  
36 shall be used to pay promptly for all cleanup and removal costs  
37 incurred by the department in cleaning up, in removing or in  
38 minimizing damage caused by such discharge.

39 Nothing in this section is intended to preclude removal and cleanup  
40 operations by any person threatened by such discharges, provided such  
41 persons coordinate and obtain approval for such actions with ongoing  
42 State or federal operations. No action taken by any person to contain  
43 or clean up and remove a discharge shall be construed as an admission  
44 of liability for said discharge. No person who renders assistance in  
45 containing or cleaning up and removing a discharge shall be liable for  
46 any civil damages to third parties resulting solely from acts or

1 omissions of such person in rendering such assistance, except for acts  
2 or omissions of gross negligence or willful misconduct. In the course  
3 of cleanup or removal operations, no person shall discharge any  
4 detergent into the waters of this State without prior authorization of  
5 the commissioner.

6 b. Notwithstanding any other provisions of P.L.1976, c.141  
7 (C.58:10-23.11 et seq.), the department, subject to the approval of the  
8 administrator with regard to the availability of funds therefor, or a  
9 local unit as a part of an emergency response action and with the  
10 approval of the department, may clean up and remove or arrange for  
11 the cleanup and removal of any hazardous substance which:

12 (1) Has not been discharged from a grounded or disabled vessel,  
13 if the department determines that such cleanup and removal is  
14 necessary to prevent an imminent discharge of such hazardous  
15 substance; or

16 (2) Has not been discharged, if the department determines that  
17 such substance is not satisfactorily stored or contained and said  
18 substance possesses any one or more of the following characteristics:

19 (a) Explosiveness;

20 (b) High flammability;

21 (c) Radioactivity;

22 (d) Chemical properties which in combination with any discharged  
23 hazardous substance at the same storage facility would create a  
24 substantial risk of imminent damage to public health or safety or an  
25 imminent and severe damage to the environment;

26 (e) Is stored in a container from which its discharge is imminent  
27 as a result of contact with a hazardous substance which has already  
28 been discharged and such additional discharge would create a  
29 substantial risk of imminent damage to public health or safety or  
30 imminent and severe damage to the environment; or

31 (f) High toxicity and is stored or being transported in a container  
32 or motor vehicle, truck, rail car or other mechanized conveyance from  
33 which its discharge is imminent as a result of the significant  
34 deterioration or the precarious location of the container, motor  
35 vehicle, truck, rail car or other mechanized conveyance, and such  
36 discharge would create a substantial risk of imminent damage to public  
37 health or safety or imminent and severe damage to the environment;  
38 or

39 (3) Has been discharged prior to the effective date of P.L.1976,  
40 c.141.

41 c. If and to the extent that he determines that funds are available,  
42 the administrator shall approve and make payments for any cleanup  
43 and removal costs incurred by the department for the cleanup and  
44 removal of a hazardous substance other than petroleum as authorized  
45 by subsection b. of this section; provided that in determining the  
46 availability of funds, the administrator shall not include as available

1 funds revenues realized or to be realized from the tax on the transfer  
2 of petroleum, to the extent that such revenues result from a tax levied  
3 at a rate in excess of \$0.01 per barrel, pursuant to subsection b. of  
4 section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the  
5 administrator determines that the sum of claims paid by the fund on  
6 behalf of petroleum discharges or cleanup and removals plus pending  
7 reasonable claims against the fund on behalf of petroleum discharges  
8 or cleanup and removals is greater than 30% of the sum of all claims  
9 paid by the fund plus all pending reasonable claims against the fund.

10 d. The administrator may only approve and make payments for any  
11 cleanup and removal costs incurred by the department for the cleanup  
12 and removal of a hazardous substance discharged prior to the effective  
13 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,  
14 and to the extent that, he determines that adequate funds from another  
15 source are not or will not be available; and provided further, with  
16 regard to the cleanup and removal costs incurred for discharges which  
17 occurred prior to the effective date of P.L.1976, c.141, the  
18 administrator may not during any one-year period pay more than  
19 \$18,000,000 in total or more than \$3,000,000 for any discharge or  
20 related set or series of discharges.

21 e. Notwithstanding any other provisions of P.L.1976, c.141, the  
22 administrator, after considering, among any other relevant factors, the  
23 department's priorities for spending funds pursuant to P.L.1976, c.141,  
24 and within the limits of available funds, shall make payments for the  
25 restoration or replacement of, or connection to an alternative water  
26 supply for, any private residential well destroyed, contaminated, or  
27 impaired as a result of a discharge prior to the effective date of  
28 P.L.1976, c.141; provided, however, total payments for said purpose  
29 shall not exceed \$500,000 for the period between the effective date of  
30 this subsection e. and January 1, 1983, and in any calendar year  
31 thereafter.

32 f. Any expenditures made by the administrator pursuant to this act  
33 shall constitute, in each instance, a debt of the discharger to the fund.  
34 The debt shall constitute a lien on all property owned by the discharger  
35 when a notice of lien, incorporating a description of the property of  
36 the discharger subject to the cleanup and removal and an identification  
37 of the amount of cleanup, removal and related costs expended from  
38 the fund, is duly filed with the clerk of the Superior Court. The clerk  
39 shall promptly enter upon the civil judgment or order docket the name  
40 and address of the discharger and the amount of the lien as set forth  
41 in the notice of lien. Upon entry by the clerk, the lien, to the amount  
42 committed by the administrator for cleanup and removal, shall attach  
43 to the revenues and all real and personal property of the discharger,  
44 whether or not the discharger is insolvent.

45 The notice of lien filed pursuant to this subsection which affects  
46 the property of a discharger subject to the cleanup and removal of a

1 discharge shall create a lien with priority over all other claims or liens  
 2 which are or have been filed against the property, except if the  
 3 property comprises six dwelling units or less and is used exclusively  
 4 for residential purposes, this notice of lien shall not affect any valid  
 5 lien, right or interest in the property filed in accordance with  
 6 established procedure prior to the filing of this notice of lien. The  
 7 notice of lien filed pursuant to this subsection which affects any  
 8 property of a discharger, other than the property subject to the cleanup  
 9 and removal, shall have priority from the day of the filing of the notice  
 10 of the lien over all other claims and liens filed against the property, but  
 11 shall not affect any valid lien, right, or interest in the property filed in  
 12 accordance with established procedure prior to the filing of a notice of  
 13 lien pursuant to this subsection.

14 g. In the event a vessel discharges a hazardous substance into the  
 15 waters of the State, the cleanup and removal and related costs  
 16 resulting from that discharge that constitute a maritime lien on the  
 17 discharging vessel pursuant to 33 U.S.C. s. 1321 or any other law,  
 18 may be recovered by the Department of Environmental Protection in  
 19 an action in rem brought in the district court of the United States. An  
 20 impoundment of a vessel resulting from this action shall continue until:

21 (1) the claim against the owner or operator of the vessel for the  
 22 cleanup and removal and related costs of the discharge is satisfied;

23 (2) the owner or operator of the vessel, or a representative of the  
 24 owner or operator, provides evidence of financial responsibility as  
 25 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and  
 26 satisfactorily guarantees that these costs will be paid; or

27 (3) the impoundment is otherwise vacated by a court order. The  
 28 remedy provided in this subsection is in addition to any other remedy  
 29 or enforcement power that the department may have under any other  
 30 law.

31 Any action brought by the State pursuant to this subsection and  
 32 any impoundment of a vessel resulting therefrom shall not subject the  
 33 State to be in any way liable for a subsequent or continued discharge  
 34 of a hazardous substance from that vessel.<sup>2</sup>

35 (cf: P.L.1991, c.373, s.14)

36

37 29. Section 1 of P.L.1993, c.112 (C.58:10-23.11g4) is amended  
 38 to read as follows:

39 1. For purposes of sections 1 through 5 of [this act] P.L.1993,  
 40 c.112 (C.58:10-23.11g4 through 58:10-23.11g8):

41 "Active participation in the management" or "participation in the  
 42 management" means actual participation in the management or  
 43 operational affairs by the holder of the security interest and shall not  
 44 include the mere capacity, or ability to influence, or the unexercised  
 45 right to control vessel [or] a facility , or underground storage tank  
 46 facility operations.

1 (1) A holder of a security interest shall be considered to be in  
2 active participation in the management, while the borrower is still in  
3 possession, only if the holder either:

4 (a) exercises decision making control over the borrower's  
5 environmental compliance, such that the holder has undertaken  
6 responsibility for the borrower's waste disposal or hazardous substance  
7 handling practices; or

8 (b) exercises control at a level comparable to that of a manager of  
9 the borrower's enterprise, such that the holder has assumed or  
10 manifested responsibility for the overall management of the enterprise  
11 encompassing the day-to-day decision making of the enterprise with  
12 respect to:

13 (i) environmental compliance; or

14 (ii) all, or substantially all, of the operational (as opposed to  
15 financial or administrative) aspects of the enterprise other than  
16 environmental compliance. Operational aspects of the enterprise  
17 include functions such as that of facility manager, underground  
18 storage tank facility manager, or plant manager, operations manager,  
19 chief operating officer, or chief executive officer. Financial or  
20 administrative aspects include functions such as that of credit manager,  
21 accounts payable or receivable manager, or both, personnel manager,  
22 controller, chief financial officer, or similar functions.

23 (2) No act or omission prior to the time that indicia of ownership  
24 are held primarily to protect a security interest constitutes evidence of  
25 participation in management. A prospective holder who undertakes or  
26 requires an environmental inspection of the vessel [or] , facility, or  
27 underground storage tank facility in which indicia of ownership are to  
28 be held, or requires a prospective borrower to clean up a vessel [or],  
29 facility , or underground storage tank facility or to comply or come  
30 into compliance (whether prior or subsequent to the time that indicia  
31 of ownership are held primarily to protect a security interest) with any  
32 applicable law or regulation, is not by such action considered to be  
33 participating in the vessel's [or], facility's, or underground storage tank  
34 facility's management, provided however, that a holder shall not be  
35 required to conduct or require an inspection to qualify for the  
36 protection for holders granted pursuant to sections 1 through 5 of [this  
37 act] P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8), and  
38 the liability of a holder shall not be based on or affected by the holder  
39 not conducting or not requiring an inspection.

40 (3) Actions that are consistent with holding ownership indicia  
41 primarily to protect a security interest do not constitute participation  
42 in management for purposes of sections 1 through 5 of [this act]  
43 P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8). The  
44 authority for the holder to make such actions may, but need not, be  
45 contained in contractual or other documents specifying requirements  
46 for financial, environmental, and other warranties, covenants,

1 conditions, representations or promises from the borrower. Loan  
2 policing and work out activities cover and include all activities up to  
3 foreclosure and its equivalents.

4 (a) A holder who engages in policing activities prior to foreclosure  
5 shall remain within the exemption provided that the holder does not by  
6 such actions participate in the management of the vessel [or], facility,  
7 or underground storage tank facility. Such actions include, but are not  
8 limited to, requiring the borrower to clean up the vessel [or], facility,  
9 or underground storage tank facility during the term of the security  
10 interest; requiring the borrower to comply or come into compliance  
11 with applicable federal, State, and local environmental and other laws,  
12 rules and regulations during the term of the security interest; securing  
13 or exercising authority to monitor or inspect the vessel [or], facility,  
14 or underground storage tank facility (including on-site inspections) in  
15 which indicia of ownership are maintained, or the borrower's business  
16 or financial conditions during the term of the security interest; or  
17 taking other actions to adequately police the loan or security interest  
18 (such as requiring a borrower to comply with any warranties,  
19 covenants, conditions, representations or promises from the  
20 borrower).

21 (b) A holder who engages in work out activities prior to  
22 foreclosure and its equivalents shall remain within the exemption  
23 provided that the holder does not by such action participate in the  
24 management of the vessel [or], facility, or underground storage tank  
25 facility. For purposes of this act, "work out" refers to those actions  
26 by which a holder, at any time prior to foreclosure and its equivalents,  
27 seeks to: prevent, cure, or mitigate a default by the borrower or  
28 obligor; or preserve or prevent the diminution of the value of the  
29 security. Work out activities include, but are not limited to:  
30 restructuring or renegotiating the terms of the security interest;  
31 requiring payment of additional rent or interest; exercising  
32 forbearance; requiring or exercising rights pursuant to an assignment  
33 of accounts or other amounts owing to an obligor; requiring or  
34 exercising rights pursuant to an escrow agreement pertaining to  
35 amounts owing to an obligor; providing specific or general financial or  
36 other advice, suggestions, counseling, or guidance; and exercising any  
37 right or remedy the holder is entitled to by law or under any  
38 warranties, covenants, conditions, representations or promises from  
39 the borrower.

40 (4) A holder does not participate in the management of a vessel  
41 [or], facility, or underground storage tank facility by making any  
42 response or performing any response action or undertaking any  
43 cleanup or removal or similar action under the federal "Comprehensive  
44 Environmental Response, Compensation, and Liability Act of 1980,"  
45 Pub.L. 96-510 (42 U.S.C. §9601 et seq.), the "Spill Compensation and  
46 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), P.L.1986,

1 c.102 (C.58:10A-21 et seq.), or any other State or federal  
2 environmental law or regulation.

3 "Date of foreclosure" means the date on which the holder obtains  
4 legal or equitable title to the vessel or facility pursuant to or incident  
5 to foreclosure.

6 "Fair consideration" means the value of the security interest when  
7 calculated as an amount equal to or in excess of the sum of the  
8 outstanding principal (or comparable amount in the cases of a lease  
9 that constitutes a security interest) owed to the holder immediately  
10 preceding the acquisition of full title (or possession in the case of  
11 property subject to a lease financing transaction) pursuant to  
12 foreclosure and its equivalents, plus any unpaid interest, rent or  
13 penalties (whether arising before or after foreclosure and its  
14 equivalents), plus all reasonable and necessary costs, fees, or other  
15 charges incurred by the holder incident to work out, foreclosure and  
16 its equivalents, retention, maintaining the business activities of the  
17 enterprise, preserving, protecting and preparing the vessel [or],  
18 facility, or underground storage tank facility prior to sale, re-lease of  
19 property held pursuant to a lease financing transaction (whether by a  
20 new lease financing transaction or substitution of the lessee) or other  
21 disposition, plus response costs incurred under applicable federal or  
22 State environmental cleanup laws or regulations, or at the direction of  
23 an on-scene coordinator, less any amounts received by the holder in  
24 connection with any partial disposition of the property, net revenues  
25 received as a result of maintaining the business activities of the  
26 enterprise, and any amounts paid by the borrower subsequent to the  
27 acquisition of full title (or possession in the case of property subject  
28 to a lease financing transaction) pursuant to foreclosure and its  
29 equivalents. In the case of a holder maintaining indicia of ownership  
30 primarily to protect a junior security interest, fair consideration is the  
31 value of all outstanding higher priority security interests plus the value  
32 of the security interest held by the junior holder, each calculated as set  
33 forth in this definition.

34 "Foreclosure" or "foreclosure and its equivalents" means purchase  
35 at foreclosure sale; acquisition or assignment of title in lieu of  
36 foreclosure; termination of a lease or other repossession; acquisition  
37 of a right to title or possession; an agreement in satisfaction of the  
38 obligation; or any other form or informal manner (whether pursuant to  
39 law or under warranties, covenants, conditions, representations or  
40 promises from the borrower) by which the holder acquires title to or  
41 possession of the secured property.

42 "Holder" is a person who maintains indicia of ownership primarily  
43 to protect a security interest. A holder includes the initial holder (such  
44 as a loan originator), any subsequent holder (such as a  
45 successor-in-interest or subsequent purchaser of the security interest  
46 on the secondary market), a guarantor of an obligation, surety, or any

1 other person who holds ownership indicia primarily to protect a  
2 security interest, or a receiver or other person who acts on behalf or  
3 for the benefit of a holder.

4 "Indicia of ownership" means evidence of a security interest,  
5 evidence of an interest in a security interest, or evidence of an interest  
6 in real or personal property securing a loan or other obligation,  
7 including any legal or equitable title to real or personal property  
8 acquired incident to foreclosure and its equivalents. Evidence of such  
9 interests include, but are not limited to, mortgages, deeds of trust,  
10 liens, surety bonds and guarantees of obligations, title held pursuant  
11 to a lease financing transaction in which the lessor does not select  
12 initially the leased property (hereinafter "lease financing transaction"),  
13 legal or equitable title obtained pursuant to foreclosure and their  
14 equivalents. Evidence of such interests also includes assignments,  
15 pledges, or other rights to or other forms of encumbrance against  
16 property that are held primarily to protect a security interest. A  
17 person is not required to hold title or a security interest in order to  
18 maintain indicia of ownership.

19 "Primarily to protect a security interest" means that the holder's  
20 indicia of ownership are held primarily for the purpose of securing  
21 payment or performance of an obligation but does not include indicia  
22 of ownership held primarily for investment purposes, nor ownership  
23 indicia held primarily for purposes other than as a protection for a  
24 security interest. A holder may have other, secondary reasons for  
25 maintaining indicia of ownership, but the primary reasons why any  
26 ownership indicia are held shall be as protection for a security interest.

27 "Security interest" means an interest in a vessel or facility created  
28 or established for the purpose of securing a loan or other obligation.  
29 Security interests include, but are not limited to, mortgages, deeds of  
30 trusts, liens, and title pursuant to lease financing transactions.  
31 Security interests may also arise from transactions such as sale and  
32 leasebacks, conditional sales, installment sales, trusts receipt  
33 transactions, certain assignments, factoring agreements, accounts  
34 receivable financing arrangements, and consignments, if the transaction  
35 creates or establishes an interest in a vessel or facility for the purpose  
36 of securing a loan or other obligation.

37 "Underground storage tank" shall have the same meaning as set  
38 forth in section 2 of P.L. 1986, c.102 (C.58:10A-22).

39 "Underground storage tank facility" shall mean one or more  
40 underground storage tanks.

41 (cf: P.L.1993,c.112,s.1)

42  
43 30. Section 2 of P.L.1993, c.112 (58:10-23.11g5) is amended to  
44 read as follows:

45 2. A person who maintains indicia of ownership of a vessel [or],  
46 facility, or underground storage tank facility primarily to protect a

1 security interest in a vessel [or], facility, or underground storage tank  
 2 facility and who does not participate in the management of the vessel  
 3 or facility or underground storage tank facility is not deemed to be an  
 4 owner or operator of the vessel [or], facility, or underground storage  
 5 tank facility, shall not be deemed the discharger or responsible party  
 6 for a discharge from the vessel [or], facility, or underground storage  
 7 tank facility and shall not be liable for cleanup costs or damages  
 8 resulting from discharges from the vessel or facility pursuant to  
 9 sections 8, 18, and 22 of P.L.1976, c.141 (C.58:10-23.11g,  
 10 58:10-23.11q and 58:10-23.11u) [or] , section 2 of P.L.1990, c.75  
 11 (C.58:10-23.11u1), or section 8 of P.L.1986, c.102 (C.58:10A-28)  
 12 except to the extent that liability may still apply to holders after  
 13 foreclosure as set forth in section 3 of [this act] P.L. 1993, c.112  
 14 (C.58:10-23.11g6).  
 15 (cf: P.L.1993,c.112,s.2)

16  
 17 31. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended  
 18 to read as follows:

19 3. The indicia of ownership, held after foreclosure, continue to be  
 20 maintained primarily as a protection for a security interest provided  
 21 that the holder did not participate in management prior to foreclosure  
 22 and that the holder undertakes to sell, re-lease property held pursuant  
 23 to a lease financing transaction (whether by a new lease financing  
 24 transaction or substitution of the lessee) or otherwise divest itself of  
 25 the vessel [or], facility, or underground storage tank facility in a  
 26 reasonably expeditious manner in accordance with the means and  
 27 procedures specified in this section. Such a holder may liquidate,  
 28 maintain business operations, undertake environmental response  
 29 actions pursuant to State and federal law, and take measures to  
 30 preserve, protect or prepare the secured asset prior to sale or other  
 31 disposition, without losing status as a person who maintains indicia of  
 32 ownership primarily to protect a security pursuant to section 2 of [this  
 33 act] P.L. 1993, c.112 (C.58:10-23.11g5).

34 a. For purposes of establishing that a holder is seeking to sell,  
 35 re-lease property held pursuant to a new lease financing transaction  
 36 (whether by a new lease financing transaction or substitution of the  
 37 lessee), or divest a vessel [or], facility, or underground storage tank  
 38 facility in a reasonably expeditious manner, the holder may use  
 39 whatever commercially reasonable means are relevant or appropriate  
 40 with respect to the vessel [or], facility, or underground storage tank  
 41 facility, or may employ the means specified in this section.

42 b. (1) A holder that outbids, rejects or fails to act upon a written  
 43 bona fide, firm offer of fair consideration within 90 days of receipt of  
 44 the offer, and which offer is received at any time after six months  
 45 following the date of foreclosure, shall not be deemed to be using a  
 46 commercially reasonable means for the purpose of this section. A

1 "written bona fide, firm offer" means a legally enforceable,  
2 commercially reasonable, cash offer solely for the foreclosed vessel  
3 [or], facility, , or underground storage tank facility, including all  
4 material terms of the transaction, from a ready, willing, and able  
5 purchaser who demonstrates to the holder's satisfaction the ability to  
6 perform. For purposes of this subsection, the six-month period begins  
7 to run from the time that the holder acquires a marketable title,  
8 provided that the holder, after the expiration of any redemption or  
9 other waiting period provided by law, was acting diligently to acquire  
10 marketable title.

11 (2) A holder that outbids, rejects, or fails to act upon an offer of  
12 fair consideration for the vessel [or], facility, or underground storage  
13 tank facility within the 90-day period, establishes that the ownership  
14 indicia in the secured property are not held primarily to protect the  
15 security interest, unless the holder is required, in order to avoid  
16 liability under federal or State law, to make a higher bid, to obtain a  
17 higher offer, or to seek or obtain an offer in a different manner.

18 c. A holder establishes that it is proceeding in a commercially  
19 reasonable manner after foreclosure by, within 12 months following  
20 foreclosure, listing the vessel [or], facility, or underground storage  
21 tank facility with a broker, dealer, or agent who deals with the type of  
22 property in question, or by advertising the vessel [or], facility, or  
23 underground storage tank facility as being for sale or disposition on  
24 at least a monthly basis in either a real estate publication or a trade or  
25 other publication suitable for the vessel [or], facility, or underground  
26 storage tank facility in question, or a newspaper of general circulation  
27 (defined as one with a circulation over 10,000, or one suitable under  
28 any applicable federal, State, or local rules of court for publication  
29 required by court order or rules of civil procedure) covering the area  
30 where the property is located. For purposes of this subsection, the  
31 12-month period begins to run from the time that the holder acquires  
32 marketable title, provided that the holder, after the expiration of any  
33 redemption or other waiting period provided by law, was acting  
34 diligently to acquire marketable title.

35 d. A holder shall sell, re-lease the property held pursuant to a new  
36 lease financing transaction, or otherwise divest such vessel [or],  
37 facility, or underground storage tank facility in a reasonably  
38 expeditious manner, but not later than five years after the date of  
39 foreclosure, except that a holder may continue to hold the property for  
40 a time period longer than five years without losing status as a person  
41 who maintains indicia of ownership primarily to protect a security  
42 interest if (1) the holder has made a good faith effort to sell, re-lease  
43 or otherwise divest itself of the property using commercially  
44 reasonable means or other procedures prescribed by this act; (2) the  
45 holder has obtained any approvals required pursuant to applicable  
46 federal or State banking or other lending laws to continue its

1 possession of the property; and (3) the holder has exercised reasonable  
2 custodial care to prevent or mitigate any new discharges from the  
3 vessel [or], facility, or underground storage tank facility that could  
4 substantially diminish the market value of the property.

5 e. (1) The exemption granted to holders pursuant to this section  
6 shall not apply to the liability for any new discharge from the vessel  
7 [or], facility, or underground storage tank facility, occurring after the  
8 date of foreclosure, that is caused by acts or omissions of the holder  
9 which can be shown, based on a preponderance of the evidence, to  
10 have been negligent. In the event a property has both preexisting and  
11 new discharges, the liability, if any, allocable to the holder pursuant to  
12 this subsection shall be limited to those cleanup costs or damages that  
13 relate directly to the new discharge. In the event there is a substantial  
14 commingling of a new discharge with a preexisting discharge, the  
15 liability, if any, allocable to the holder pursuant to this subsection shall  
16 be limited to the cleanup costs or damages in excess of those cleanup  
17 costs or damages relating to the preexisting discharge.

18 In order to establish that a discharge occurred or began prior to the  
19 date of foreclosure, a holder may perform, but shall not be required to  
20 perform, an environmental audit, in accordance with any applicable  
21 Department of Environmental Protection [and Energy] regulations and  
22 guidelines, to identify such discharges at the vessel [or] , facility, or  
23 underground storage tank facility. Upon receipt of a complete audit  
24 from the holder, the Department of Environmental Protection [and  
25 Energy] shall, within 90 days of its receipt of the audit, review the  
26 audit and transmit its findings to the holder. The Department of  
27 Environmental Protection [and Energy] may charge reasonable fees  
28 and adopt any additional regulations necessary to provide guidelines  
29 for the submission and review of such audits.

30 (2) Nothing in this subsection shall be deemed to impose liability  
31 for a new discharge from the vessel [or], facility, or underground  
32 storage tank facility that is authorized pursuant to a federal or State  
33 permit or cleanup procedure.

34 (3) The exemption granted to holders of indicia of ownership to  
35 protect a security interest shall not apply to liability, if any, pursuant  
36 to applicable law and regulation, for arranging for the offsite disposal  
37 or treatment of a hazardous substance or by accepting for  
38 transportation and disposing of a hazardous substance at an offsite  
39 facility selected by the holder.

40 f. (1) A holder who acquires an underground storage tank  
41 continues to hold the exemption granted to holders pursuant to this  
42 section if there is an operator of the underground storage tank, other  
43 than the holder, who is in control of the underground storage tank or  
44 has responsibility for compliance with applicable federal and State  
45 requirements.

46 (2) If an operator does not exist, a holder continues to maintain

1 the exemption from liability granted to holders pursuant to this section  
2 if the holder: ( i) empties all underground storage tanks within 60  
3 days after foreclosure or within 60 days after the effective date of  
4 P.L. , c. (now in the Legislature as this bill), whichever is later, so  
5 that no more than one inch of residue, or .3 percent by weight of the  
6 total capacity of the underground storage tank remains in the  
7 underground storage tank, leaves vent lines open and functioning, and  
8 caps and secures all other lines, pumps, manways, and ancillary  
9 equipment; (ii) empties those underground storage tanks that are  
10 discovered after foreclosure within 60 days of discovery or within 60  
11 days of the effective date of P.L. , c. (now in the Legislature as this  
12 bill), whichever is later, so that no more than one inch of residue, or  
13 .3 percent by weight of the total capacity of the underground storage  
14 tank remains in the system, leaves vent lines open and functioning, and  
15 caps and secures all other lines, pumps, manways, and ancillary  
16 equipment; and (iii) permanently closes the underground storage tank  
17 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.)  
18 or temporarily closes the underground storage tank.

19 g. An underground storage tank may be temporarily closed until  
20 a subsequent purchaser has acquired marketable title to the  
21 underground storage tank. When a subsequent purchaser acquires  
22 marketable title to the facility, the purchaser shall operate the  
23 underground storage tank in accordance with applicable State and  
24 federal laws or shall permanently close or remove the underground  
25 storage tank in accordance with the provisions of P.L.1986. c.102  
26 (C.58:10A-21 et seq.).

27 For the purposes of this section, an underground storage tank shall  
28 be considered temporarily closed if a holder installs or continues to  
29 operate and maintain corrosion protection and reports suspected  
30 releases to the Department of Environmental Protection. If the  
31 underground storage tank has not been upgraded to comply with the  
32 provisions of P.L.1986, c.102 and the applicable federal law or does  
33 not comply with the standards for new underground storage tanks  
34 pursuant to State and federal law except for spill and overfill  
35 protection, and is temporarily closed for 12 months or more, the  
36 holder shall conduct a site investigation in accordance with rules and  
37 regulations adopted by the department.

38 (cf: P.L.1993, c.112, s.3)

39

40 32. Section 4 of P.L.1993, c.112 (C.58:10-23.11g7) is amended  
41 to read as follows:

42 4. a. Nothing in sections 1 through 5 of [this act] P.L. 1993,  
43 c.112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to  
44 prohibit or limit the rights of the Department of Environmental  
45 Protection [and Energy] to clean up a property or to obtain a lien on  
46 the property of a discharger or holder in order to recover cleanup

1 costs pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any  
2 recovery of cleanup costs from a holder pursuant to a lien obtained by  
3 the Department of Environmental Protection [and Energy] shall be  
4 limited to the actual financial benefit conferred on such holder by a  
5 cleanup or removal action, and shall not exceed the amount realized  
6 by the holder on the sale or other disposition of the property.

7 b. Nothing in sections 1 through 5 of [this act] P.L. 1993, c. 112  
8 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to prohibit  
9 or limit the rights of the Department of Environmental Protection [and  
10 Energy], pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f),  
11 to direct the holder to take any emergency response actions, including  
12 closure of the vessel [or], facility, or underground storage tank  
13 facility, necessary to prevent, contain or mitigate a continuing or new  
14 discharge that poses an immediate threat to the environment or to the  
15 public health, safety or welfare.

16 c. (1) If a holder forecloses on a vessel [or], facility, or  
17 underground storage tank facility at which it has actual knowledge a  
18 discharge occurred or began prior to the date of foreclosure, the  
19 holder shall, within 30 days of the date of foreclosure, notify the  
20 Department of Environmental Protection [and Energy] that  
21 foreclosure has occurred. Any person who fails to give notice  
22 required pursuant to this subsection or knowingly gives or causes to  
23 be given false information in any such report, shall be subject to a civil  
24 penalty not to exceed \$25,000. A court, in determining the amount of  
25 the penalty to be imposed, shall consider, among other relevant  
26 factors, the amount of any damages caused by the failure to give  
27 timely notice and whether the failure to notify was inadvertent or  
28 intentional.

29 (2) The holder shall immediately notify the Department of  
30 Environmental Protection [and Energy] of any new discharge, of  
31 which it has actual knowledge, occurring after the date of foreclosure,  
32 from the vessel [or], facility, or underground storage tank facility.  
33 Any person who fails to give notice required pursuant to this  
34 subsection or knowingly gives or causes to be given any false  
35 information in any such report, shall be subject to a civil penalty not  
36 to exceed \$10,000 per day for each violation. A court, in determining  
37 the amount of the penalty to be imposed and the appropriateness of  
38 imposing multiple penalties for a continuing offense, shall consider,  
39 among other relevant factors, the amount of any damages caused by  
40 the failure to give timely notice and whether the failure to notify was  
41 inadvertent or intentional.

42 (3) Any penalty incurred under this section may be recovered with  
43 costs in a summary proceeding pursuant to "the penalty enforcement  
44 law," N.J.S.2A:58-1 et seq., in the Superior Court or a municipal  
45 court. Failure to give any required notice pursuant to this subsection  
46 shall not cause the holder to lose its status as a person who maintains

1 indicia of ownership primarily to protect a security interest.  
2 (cf: P.L.1993, c.112, s.4)

3  
4 33. (New section) A holder of an interest in an underground  
5 storage tank shall not be required to comply with the provisions of  
6 P.L.1986, c.102 (C.58:10A-21 et seq.) unless the holder loses the  
7 exemption under P.L.1993, c.112 (C.58:10-23.11g4 et seq.).

8  
9 34. (New section) As used in sections 34 through 39 of P.L. ,  
10 c. (C. )(now before the Legislature as this bill):

11 "Contamination" or "contaminant" means any discharged  
12 hazardous substance as defined pursuant to section 3 of P.L.1976,  
13 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to  
14 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
15 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

16 "Developer" means any person that enters or proposes to enter into  
17 a redevelopment agreement with the State pursuant to the provisions  
18 of section 35 of P.L. , c. (C. )(pending in the Legislature as  
19 this bill).

20 "Director" means the Director of the Division of Taxation in the  
21 Department of the Treasury.

22 "Project" or "redevelopment project" means a specific work or  
23 improvement, including lands, buildings, improvements, real and  
24 personal property or any interest therein, including lands under water,  
25 riparian rights, space rights and air rights, acquired, owned, developed  
26 or redeveloped, constructed, reconstructed, rehabilitated or improved,  
27 undertaken by a developer within an area of land whereon a  
28 contaminated site is located, under a redevelopment agreement with  
29 the State pursuant to section 35 of P.L. , c. (C. ) (pending in the  
30 Legislature as this bill).

31 "Redevelopment agreement" means an agreement between the  
32 State and a developer under which the developer agrees to perform  
33 any work or undertaking necessary for the remediation of the  
34 contaminated site located at the site of the redevelopment project, and  
35 for the clearance, development or redevelopment, construction or  
36 rehabilitation of any structure or improvement of commercial,  
37 industrial or public structures or improvements within an area of land  
38 whereon a contaminated site is located pursuant to section 35 of  
39 P.L. , c. (C. ) (pending in the Legislature as this bill), and the  
40 State agrees that the developer shall be eligible for the reimbursement  
41 of up to 75% of the costs of remediation of the contaminated site from  
42 the fund established pursuant to section 38 of P.L. c. (C. )  
43 (pending in the Legislature as this bill) as authorized pursuant to  
44 section 36 of P.L. , c. (C. )(pending in the Legislature as this  
45 bill).

46 "Remediation" or "remediate" means all necessary actions to

1 investigate and clean up or respond to any known, suspected, or  
2 threatened discharge of contaminants, including, as necessary, the  
3 preliminary assessment, site investigation, remedial investigation, and  
4 remedial action, as those terms are defined in section 23 of P.L.1993,  
5 c.139 (C.58:10B-1).

6 "Remediation costs" means all reasonable costs associated with the  
7 remediation of a contaminated site except that "remediation costs"  
8 shall not include any costs incurred in financing the remediation.

9  
10 35. (New section) a. The provisions of any other law, or rule or  
11 regulation adopted pursuant thereto, to the contrary notwithstanding,  
12 any developer may enter into a redevelopment agreement with the  
13 State pursuant to the provisions of this section. The State may not  
14 enter into a redevelopment agreement with a developer who is liable,  
15 pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976,  
16 c.141 (C.58:10-23.11g), for the contamination at the site proposed to  
17 be in the redevelopment agreement.

18 The decision whether or not to enter into a redevelopment  
19 agreement is solely within the discretion of the Commissioner of  
20 Commerce and Economic Development <sup>1</sup>and the State Treasurer<sup>1</sup> and  
21 <sup>1</sup>[nothing] both must agree to enter into the redevelopment agreement.  
22 Nothing<sup>1</sup> in P.L. , c. (C. )(now before the Legislature as this  
23 bill) may be construed to compel the commissioner <sup>1</sup>and the State  
24 Treasurer<sup>1</sup> to enter into any redevelopment agreement.

25 The Commissioner of Commerce and Economic Development in  
26 consultation with the State Treasurer shall negotiate the terms and  
27 conditions of any redevelopment agreement on behalf of the State.  
28 The redevelopment agreement shall specify the amount of the  
29 reimbursement to be awarded the developer, the frequency of  
30 payments and the length of time in which that reimbursement shall be  
31 granted. In no event shall the amount of the reimbursement, when  
32 taken together with the property tax exemption received pursuant to  
33 the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-  
34 3.151), less any in lieu of tax payments made pursuant to that act, or  
35 any other State, local, or federal tax incentive <sup>1</sup>or grant<sup>1</sup> to remediate  
36 a site, exceed <sup>1</sup>75% of<sup>1</sup> the total cost of the remediation.

37 <sup>1</sup>The commissioner and the State Treasurer may only enter into a  
38 redevelopment agreement if they make a finding that the State tax  
39 revenues to be realized from the redevelopment project will be in  
40 excess of the amount necessary to reimburse the developer. This  
41 finding may be made by an estimation based upon the professional  
42 judgment of the commissioner and the State Treasurer.

43 The percentage of each payment to be made to the developer  
44 pursuant to the redevelopment agreement shall be conditioned on the  
45 occupancy rate of the buildings or other work areas located on the  
46 property. The redevelopment agreement shall provide for the

payments made in order to reimburse the developer to be in the same percentages as the occupancy rate at the site except that upon the attainment of a 90% occupancy rate, the developer shall be entitled to the entire amount of each payment toward the reimbursement as set forth in the redevelopment agreement. The redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate during the payment schedule.<sup>1</sup>

b. In deciding whether or not to enter into a redevelopment agreement and in negotiating a redevelopment agreement with a developer, the commissioner shall consider the following factors:

(1) the economic feasibility of the redevelopment project;

(2) the extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;

(3) the degree to which the redevelopment project will advance State, regional and local development and planning strategies;

(4) the likelihood that the redevelopment project shall <sup>1</sup>,<sup>1</sup> upon completion <sup>1</sup>,<sup>1</sup> be capable of generating <sup>1</sup>[sufficient]<sup>1</sup> new tax revenue <sup>1</sup>in an amount in excess of the amount necessary<sup>1</sup> to reimburse the developer for the remediation costs incurred <sup>1</sup>as provided in the redevelopment agreement<sup>1</sup>;

(5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

(6) the need of the redevelopment agreement to the viability of the redevelopment project; and

(7) the degree to which the redevelopment project enhances and promotes job creation and economic development.

36. (New section) a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer that enters into a redevelopment agreement pursuant to section 35 of P.L. , c. (C. ) (pending in the Legislature as this bill), may be eligible for reimbursement of up to 75% of the costs of the remediation of the subject real property pursuant to the provisions of this section upon the commencement of a business operation within a redevelopment project.

b. To be eligible for reimbursement of the costs of remediation, a developer shall submit an application, in writing, to the director for review and certification of the reimbursement. The director shall review the request for the reimbursement upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. <sup>1</sup>The director shall also make a finding of the occupancy rate of the property subject to the redevelopment agreement in the frequency set forth in the redevelopment agreement as provided in section 35 of P.L. , c. (C. ) (in the Legislature as this bill).<sup>1</sup>

1 The director shall certify a developer to be eligible for the  
2 reimbursement if the director <sup>1</sup>[shall find] finds<sup>1</sup> that:

3 (1) a place of business is located in the area subject to the  
4 redevelopment agreement that has generated new tax revenues;

5 (2) <sup>1</sup>[the additional tax revenue that was generated on that site is  
6 sufficient to pay monies into the fund to provide for the negotiated  
7 reimbursement;

8 (3)]<sup>1</sup> the developer had entered into a memorandum of agreement  
9 with the Commissioner of Environmental Protection, after the  
10 developer entered into the redevelopment agreement, for the  
11 remediation of contamination located on the site of the redevelopment  
12 project pursuant to section 37 of P.L. , c. (C. ) (pending in  
13 the Legislature as this bill) and the developer is in compliance with the  
14 memorandum of agreement; and

15 <sup>1</sup>[(4)] (3) <sup>1</sup> the costs of the remediation were actually and  
16 reasonably incurred. In making this finding the director may consult  
17 with the Department of Environment Protection.

18 c. When filing an application for certification for a reimbursement  
19 pursuant to this section, the developer shall submit to the director a  
20 certification of the total remediation costs incurred by the developer  
21 for the remediation of the subject property located at the site of the  
22 redevelopment project as provided in the redevelopment agreement <sup>1</sup>,  
23 information concerning the occupancy rate of the buildings or other  
24 work areas located on the property subject to the redevelopment  
25 agreement, and such other information as the director deems necessary  
26 in order to make the certifications and findings pursuant to this  
27 section<sup>1</sup>.

28  
29 37. (New section) a. To qualify for the certification of  
30 reimbursement of the remediation costs authorized pursuant to section  
31 36 of P.L. , c. (C. ) (pending in the Legislature as this bill),  
32 a developer shall enter into a memorandum of agreement with the  
33 Commissioner of Environmental Protection for the remediation of the  
34 site of the redevelopment project.

35 b. Under the memorandum of agreement, the developer shall agree  
36 to perform and complete any remediation activity as may be required  
37 by the Department of Environmental Protection to ensure the  
38 remediation is conducted pursuant to the regulations adopted by the  
39 Department of Environmental Protection pursuant to P.L.1993, c.139  
40 (C.58:10B-1 et seq.).

41 c. After the developer has entered into a memorandum of  
42 agreement with the Commissioner of Environmental Protection, the  
43 commissioner shall submit a copy thereof to the developer, the clerk  
44 of the municipality in which the subject property is located, the  
45 Commissioner of the Department of Commerce and Economic  
46 Development, and the director.

1        38. (New section) a. There is created in the Department of  
2 Treasury a special fund to be known as the Brownfield Site  
3 Reimbursement Fund. Moneys in the fund shall be dedicated to the  
4 purpose of reimbursing a developer who enters into a redevelopment  
5 agreement pursuant to section 35 of P.L. c. (C. ) (pending in the  
6 Legislature as this bill) and is certified for reimbursement pursuant to  
7 section 36 of P.L. c. (C. ) (pending in the Legislature as this bill).  
8 A special account within the fund shall be created for each developer  
9 upon approval of a certification pursuant to section 36 of P.L. , c.  
10 (C. ) (pending in the Legislature as this bill). The Legislature shall  
11 annually appropriate the entire balance of the fund for the purposes of  
12 reimbursement of remediation costs as provided in section 39 of  
13 P.L. , c. (C. ) (pending in the Legislature as this bill).

14        b. The fund shall be credited with an amount <sup>1</sup>from the General  
15 Fund<sup>1</sup>, determined sufficient by the Commissioner of Commerce and  
16 Economic Development, to provide the negotiated reimbursement to  
17 the developer. <sup>1</sup>[The fund shall be credited, as necessary, with monies  
18 that are paid or that are the equivalent to the new taxes derived from  
19 the operation of business activities on the site.]<sup>1</sup> Monies credited to  
20 the fund shall be an amount that equals the percent of the remediation  
21 costs expected to be reimbursed pursuant to the redevelopment  
22 agreement. <sup>1</sup>[Revenues] In estimating the amount of new State taxes  
23 that is anticipated to be derived from a redevelopment project pursuant  
24 to section 35 of P.L. , c. (C. )(now before the Legislature as  
25 this bill), the Commissioner of Commerce and Economic Development  
26 and the State Treasurer shall consider taxes<sup>1</sup> from the following  
27 <sup>1</sup>[taxes may be used to calculate the amount of monies that needs to  
28 be credited to the fund]<sup>1</sup>: the Corporation Business Tax Act (1945),  
29 P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax  
30 Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine  
31 insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed  
32 on fire insurance companies pursuant to R.S.54:17-4 et al., the tax  
33 imposed on insurers generally, pursuant to P.L.1945, c.132  
34 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities  
35 gross receipts tax and public utility excise tax imposed pursuant to  
36 P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and  
37 C.54:30A-49 et seq.), that is a taxpayer in respect of net profits from  
38 business, a distributive share of partnership income, or a prorata share  
39 of S corporation income under the "New Jersey Gross Income Tax  
40 Act," N.J.S.54A:1-1 et seq., or who is required to collect the tax  
41 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1  
42 et seq.).

43  
44        39. (New section) a. The State Treasurer shall reimburse the  
45 developer the amount of the remediation costs agreed upon in the  
46 redevelopment agreement <sup>1</sup>, and as provided in sections 35 and 36 of

1 P.L. , c. (C. )(now before the Legislature as this bill)<sup>1</sup> upon  
2 issuance of the certification by the director pursuant to section 36 of  
3 P.L. , c. (C. ) (pending in the Legislature as this bill). The  
4 developer shall be entitled to periodic payments from the fund in an  
5 amount, in the frequency, and over the time period as provided in the  
6 redevelopment agreement. <sup>2</sup>Notwithstanding any other provision of  
7 sections 34 through 39 of P.L. ,c. (C. )(before the Legislature  
8 ast this bill), the State Treasurer may not reimburse the developer any  
9 amount of the remediation costs from the fund until the State  
10 Treasurer is satisfied that the anticipated tax revenues from the  
11 redevelopment project have been realized by the State in an amount  
12 sufficient to pay for the cost of the reimubursements.<sup>2</sup>

13 b. A developer shall submit to the director updated remediation  
14 costs actually incurred by the developer for the remediation of the  
15 contaminated property located at the site of the redevelopment project  
16 as provided in the redevelopment agreement. The reimbursement  
17 authorized pursuant to this section shall continue until such time as the  
18 aggregate dollar amount of the agreed upon reimbursement. To remain  
19 entitled to the reimbursement authorized pursuant to this section, the  
20 developer shall perform and complete all remediation activities as may  
21 be required pursuant to the memorandum of agreement entered into  
22 with the Commissioner of Environmental Protection pursuant to  
23 section 37 of P.L. , c. (C. )(pending in the Legislature as this  
24 bill). The Department of Environmental Protection may review the  
25 remediation costs incurred by the developer to determine if they are  
26 reasonable.

27  
28 40. (New Section) a. There is established a Legislative  
29 Underground Storage Tank Remediation Task Force. The task force  
30 shall consist of seven members as follows: one member of the Senate  
31 to be appointed by the Senate President; one member of the General  
32 Assembly to be appointed by the Speaker of the General Assembly;  
33 the Commissioner of Environmental Protection or a designee; an  
34 environmental consultant with a degree in hydrogeology and  
35 experience in petroleum underground storage tank remediations to be  
36 appointed by the Senate President; a representative of an  
37 environmental interest group to be appointed by the Senate President;  
38 a small business representative who owns or operates an underground  
39 storage tank to be appointed by the Speaker of the General Assembly;  
40 and a representative from a major oil company to be appointed by the  
41 Speaker of the General Assembly.

42 The chairman of the task force shall be jointly appointed by the  
43 Senate President and the Speaker of the General Assembly. Vacancies  
44 shall be filled in the same manner as the original appointments are  
45 made.

46 b. The task force shall evaluate the use of expanded risk based

1 decision making that allows for alternative remediation standards and  
2 natural attenuation in all environmental media at petroleum  
3 underground storage tank discharge sites; <sup>2</sup>consider the use of  
4 standard probabilistic approaches in the development of minimum  
5 remediation standards;<sup>2</sup> examine and evaluate the State policy's that  
6 are preventing the development and use of alternative remediation  
7 standards for soil and groundwater and the implementation of the Risk  
8 Based Corrective Action decision making process described in ASTM  
9 standard 1739-95.

10 Within six months of the first meeting, the task force shall prepare  
11 a written report to the Legislature and the Chairman of the Senate  
12 Environment Committee, and the Assembly Agriculture and Waste  
13 Management Committee or their successor committees. The report  
14 shall include a comparison of the department's process for remediating  
15 petroleum underground storage tanks with the process recommended  
16 in the the Risk Based Corrective Action decision making process  
17 described in ASTM standard 1739-95 or that used by other states, an  
18 examination of the process that could be used to develop alternative  
19 remediation standards, a review and discussion of any policy changes  
20 necessary in order to allow for natural attenuation in all environmental  
21 media; together with any recommendations for further legislative  
22 remedies regarding expanded risk based decision making at petroleum  
23 underground storage tank discharge sites.

24 (3) The task force shall convene its first meeting within sixty days  
25 of the effective date of P.L.1997, c. (now in the Legislature as this  
26 bill).

27  
28 41. There is appropriated to the Department of Environmental  
29 Protection from the "1996 Environmental Cleanup Fund" created  
30 pursuant to section 19 of the "Port of New Jersey Revitalization,  
31 Dredging, Environmental Cleanup, Lake Restoration, and Delaware  
32 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the  
33 sum of \$3,000,000 for the investigations, determinations, and data  
34 collection and entry into the geographic information system as  
35 provided in section 3 of this act.

36  
37 42. There is appropriated to the Department of Environmental  
38 Protection from the "1996 Environmental Cleanup Fund" created  
39 pursuant to section 19 of the "Port of New Jersey Revitalization,  
40 Dredging, Environmental Cleanup, Lake Restoration, and Delaware  
41 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the  
42 sum of \$2,000,000 for the data collection and entry into the  
43 geographic information system as provided in section 4 of this act.

44  
45 43. Section 14 of P.L.1993, c.139 (C.3:1K-11.3) is amended to  
46 read as follows:

1       14. a. The owner or operator of an industrial establishment  
2 planning to close operations or transfer ownership or operations of the  
3 industrial establishment may, in lieu of complying with the provisions  
4 of subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9), apply to  
5 the department for a limited site review. An application for a limited  
6 site review pursuant to this section shall include:

7       (1) the notice required pursuant to the provisions of subsection a.  
8 of section 4 of P.L.1983, c.330 (C.13:1K-9);

9       (2) a certification that for the industrial establishment, a remedial  
10 action workplan has previously been implemented and a no further  
11 action letter has been issued pursuant to P.L.1983, c.330, a negative  
12 declaration has been previously approved by the department pursuant  
13 to P.L.1983, c.330, or the department or the United States  
14 Environmental Protection Agency, pursuant to the "Resource  
15 Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the  
16 "Comprehensive Environmental Response, Compensation, and  
17 Liability Act of 1980," 42 U.S.C. §9601 et seq., or any other law, has  
18 previously approved a remediation of the industrial establishment  
19 equivalent to that performed pursuant to the provisions of P.L.1983,  
20 c.330;

21       (3) a certification that the owner or operator has performed  
22 remediation activities at the industrial establishment that are consistent  
23 with current regulations established by the department in order to  
24 identify areas of concern and, based on those remediation activities,  
25 that subsequent to the issuance of the negative declaration, no further  
26 action letter or remediation approval described in paragraph (2) of this  
27 subsection, a discharge has occurred at the industrial establishment  
28 that was not remediated in accordance with the procedures established  
29 by the department or that any remediation performed has not been  
30 approved by the department and that no other discharge of a  
31 hazardous substance or hazardous waste has occurred at the industrial  
32 establishment;

33       (4) a certification that for any underground storage tank covered  
34 by the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), an  
35 approved method of secondary containment or a monitoring system as  
36 required by P.L.1986, c.102, has been installed;

37       (5) a copy of the most recent negative declaration, no further  
38 action letter, or other approval, as applicable, approved by the  
39 department for the industrial establishment; and

40       (6) a proposed negative declaration, if applicable.

41       b. Upon the submission of a complete application, and after an  
42 inspection if necessary, the department may:

43       (1) approve the negative declaration upon a finding that any  
44 discharge of a hazardous substance or hazardous waste, as certified to  
45 pursuant to paragraph (3) of subsection a. of this section, has been  
46 remediated consistent with the applicable remediation <sup>1</sup>[standards]

1 regulations<sup>1</sup> as established by the department; or

2 (2) require that the owner or operator perform a remediation as  
3 set forth in subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9)  
4 only for those areas of concern identified by the information provided  
5 pursuant to paragraph (3) of subsection a. of this section upon a  
6 finding that further investigation or remediation is necessary to bring  
7 the industrial establishment into compliance with the applicable  
8 remediation <sup>1</sup>[standards] regulations<sup>1</sup>.

9 c. The owner or operator of an industrial establishment subject to  
10 the provisions of this section shall not close operations or transfer  
11 ownership or operations until a remedial action workplan, or a  
12 negative declaration, as applicable, has been approved by the  
13 department or upon approval of a remediation agreement as provided  
14 in subsection e. of section 4 of P.L.1983, c.330.

15 (cf: P.L.1993, c.139, s.14)

16

17 <sup>1</sup>44. Section 43 of P.L.1993, c.139 (C.58:10B-19) is amended to  
18 read as follows:

19 43. The owner or operator of an industrial establishment who has  
20 submitted a notice to the department pursuant to subsection a. of  
21 section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has  
22 discharged a hazardous substance or is liable for the remediation of  
23 that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or  
24 any person who has been directed to or has entered into an agreement  
25 with the department to remediate a discharge, may implement an  
26 interim response action prior to departmental approval of that action.  
27 The interim response action may be implemented when the expeditious  
28 temporary or partial remediation of a discharged hazardous substance  
29 or hazardous waste is necessary to contain or stabilize a discharge  
30 prior to implementation of an approved remedial action workplan in  
31 order to prevent, minimize, or mitigate damage to public health or  
32 safety or to the environment which may otherwise result from a  
33 discharge. The interim response action shall be implemented in  
34 compliance with the procedures and standards established by the  
35 department. The department may require submission of a notice of  
36 intent to implement an interim response action, what those actions will  
37 be, and may require, subsequent to completion of the interim response  
38 action, a report detailing the actions taken and a certification that the  
39 interim response action was implemented in accordance with all  
40 applicable laws and regulations. The department shall review these  
41 submissions to verify whether the interim response action was  
42 implemented in accordance with applicable laws and regulations. The  
43 department shall not require that additional remediation be undertaken  
44 at an area of concern subject to the interim response action except in  
45 instances when further remediation is necessary to bring that area of  
46 concern into compliance with the applicable remediation [standards]

1 regulations.

2 The department may, pursuant to the "Administrative Procedure  
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
4 regulations establishing a fee schedule, as necessary, reflecting the  
5 actual costs associated with the review of the interim response action  
6 and any implementation thereof.<sup>1</sup>

7 (cf: P.L.1993, c.139, s.43)

8

9 <sup>1</sup>45. Section 6 of P.L.1993, c.112 (C.58:10-23.11g9) is amended  
10 to read as follows:

11 6. In the event of the discharge of a hazardous substance from a  
12 vessel [or] , facility, or underground storage tank facility, which vessel  
13 [or] , facility , or underground storage tank facility is all or part of a  
14 trust, receivership estate, guardianship estate or estate of a deceased  
15 person, only the assets of the trust or estate, or assets of any  
16 discharger other than the fiduciary of such trust or estate, shall be  
17 subject to the obligation to pay for the cleanup of the discharge as set  
18 forth in the "Spill Compensation and Control Act," P.L.1976, c.141  
19 (C.58:10-23.11 et seq.) or subject to any obligations imposed pursuant  
20 to P.L.1986, c.102 (C.58:10A-21 et seq.).<sup>1</sup>

21 (cf: P.L.1993, c.112, s.6)

22

23 <sup>2</sup>46. Section 20 of P.L.1993, c.139 (C.13:1K-11.9) is amended to  
24 read as follows:

25 20. a. Where the owner of an industrial establishment is a  
26 landlord and the operator of the industrial establishment is a tenant,  
27 the landlord shall be responsible for providing any information that is  
28 requested by the tenant that is not otherwise available through a  
29 diligent inquiry by the tenant, and the tenant shall be responsible for  
30 providing any information that is requested by the landlord that is not  
31 otherwise available through a diligent inquiry by the landlord.

32 b. Where the owner of an industrial establishment is a landlord  
33 and the operator of the industrial establishment is a tenant, the person  
34 that remediates the industrial establishment shall provide copies to the  
35 other person of all submissions to the department concerning the  
36 remediation.

37 c. Where the owner of an industrial establishment is a landlord and  
38 the operator of the industrial establishment is a tenant, and there has  
39 been a failure to comply with the provisions of P.L.1983, c.330, the  
40 landlord or the tenant may petition the department, in writing, to first  
41 compel that party who is responsible pursuant to the provisions of the  
42 lease, to comply with the requirements of P.L.1983, c.330. [The  
43 petition shall include a copy of the signed lease between the landlord  
44 and the tenant.] The department shall develop a form for a petition  
45 made pursuant to this section, and shall establish a list of documents  
46 required to be submitted with the petition which shall include, but not

1 be limited to: (1) a copy of the notice required pursuant to subsection  
2 a. of section 4 of P.L.1983, c.330 (C.13:1K-9); (2) the names and  
3 addresses of the landlord and the tenant; (3) a copy of the signed lease  
4 between the landlord and the tenant; (4) a certification by the  
5 petitioner that includes the relevant facts concerning noncompliance  
6 with the act; and (5) any other documents the department deems  
7 relevant. The department shall make a determination that the  
8 provisions of the lease are unclear within 30 days of receipt of a  
9 complete petition. Upon a determination by the department that the  
10 provisions of the lease are unclear as it relates to the responsibility of  
11 either party to comply with the provisions of P.L.1983, c.330, or upon  
12 the failure by the person responsible pursuant to the provisions of the  
13 lease to comply, the department may compel compliance by all persons  
14 subject to the requirements of P.L.1983, c.330 for the industrial  
15 establishment.<sup>2</sup>

16 (cf: P.L.1993, c.139, s.20)

17

18 <sup>2</sup>47. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to  
19 read as follows:

20 8. a. Failure of the transferor to perform a remediation and obtain  
21 department approval thereof as required pursuant to the provisions of  
22 this act is grounds for voiding the sale or transfer of an industrial  
23 establishment or any real property utilized in connection therewith by  
24 the transferee, entitles the transferee to recover damages from the  
25 transferor, and renders the owner or operator of the industrial  
26 establishment strictly liable, without regard to fault, for all remediation  
27 costs and for all direct and indirect damages resulting from the failure  
28 to implement the remedial action workplan. A transferee may not act  
29 to void the sale or transfer of an industrial establishment or any real  
30 property except upon providing notice to the transferor of the failure  
31 to perform and affording the transferor a reasonable amount of time  
32 to comply with the provisions of this act. A transferee may bring an  
33 action in Superior Court to void the sale or transfer of an industrial  
34 establishment or any real property or to recover damages from the  
35 transferor, pursuant to this section.

36 b. Any person who knowingly gives or causes to be given any  
37 false information or who fails to comply with the provisions of this act  
38 is liable for a penalty of not more than \$25,000.00 for each offense.  
39 If the violation is of a continuing nature, each day during which it  
40 continues shall constitute an additional and separate offense. Penalties  
41 shall be collected in a civil action by a summary proceeding under "the  
42 penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or  
43 management official of an industrial establishment who knowingly  
44 directs or authorizes the violation of any provisions of this act shall be  
45 personally liable for the penalties established in this subsection.<sup>2</sup>

46 (cf: P.L.1993, c.139, s.12)

9

11

13

15 Makes various changes in the law in order to facilitate the remediation  
16 of contaminated real property; appropriates \$5 million.